TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible].

No. [illegible]18.

MGR. JEREMIAH J. HARTY, APPELLANT AND PLAINTIFF IN ERROR,

vs.

THE MUNICIPALITY OF VICTORIA.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED OCTOBER 13, 1904.

(21,873.)

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1 THE UNITED STATES OF AMERICA,
Philippine Islands:

IN the Court of First Instance of the Province of Tarlac.

MGR. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff,

vs.

THE MUNICIPALITY OF VICTORIA, Defendant.

Bill of Exceptions.

Be it remembered that, at a term of the Court of First Instance of the Province of Tarlac, the following proceedings in the above-entitled action were had:

On January 17th, 1908, plaintiff herein filed a bill of complaint in the Court of First Instance of the Province of Tarlac, Philippine Islands, which said bill, omitting title of Court and cause, is as follows:

Comes now plaintiff, through his Attorneys Hartigan, Rohde & Gutierrez, and as a cause of action against the defendant alleges:

(1) That he is the duly appointed Roman Catholic Archbishop of the City of Manila, duly constituted as a unipersonal corporation under the laws of the Philippine Islands;

(2) That the defendant municipality is a corporation duly organized under the laws of the Philippine Islands;

(3) That plaintiff in his aforesaid capacity, as set out in
2 paragraph 1 of this complaint, is the legal administrator of all the property and rights which the Roman Catholic Apostolic Church has within the archdioces- of Manila;

(4) That the Parish of Victoria, of the Roman Catholic Church, has been and is now the owner of a parcel of land known as the "plaza" (Square) of the Church of Victoria, situated within the Municipality of Victoria, Province of Tarlac, Philippine Islands, its metes and bounds being as follows:

It is bounded on the north by the street formerly known as Pinac, now San Mariano; on the east by the street formerly named La Paz and now San Ambrosio; on the south by the street formerly known as Real and now Rizal, and on the west by the street formerly named Gerona and now San Gabriel. It measures two hundred and sixty-six meters on the north, three hundred and nine meters on the east and west, and two hundred and ninety-five meters on the south;

(5) That the Parish of Victoria, of the Roman Catholic Church, acquired the said land more than sixty years ago, and has since that time been in possession thereof until the year 1901, when defendant municipality forcibly and unlawfully took possession of the same;

(6) That the defendant municipality is now in possession of the said land and claims title thereto;

(7) That the Municipality of Victoria, Province of Tarlac, is within the jurisdiction of the archdioces- of Manila;

Wherefore, Plaintiff prays this honorable Court to enter judgment declaring that the said land is the property of the Parish Church of Victoria, of the Roman Catholic Apostolic Church, and directing that defendant vacate the same and pay the costs of this action.

Manila, January 17, 1908.

(Signed) HARTIGAN, ROHDE & GUTIERREZ,
Counsel for Plaintiff.

3 On February 6th, nineteen hundred and eight, defendant having previously appeared, filed its answer to plaintiff's complaint, through its Attorney Felipe Buencamino, which said answer, omitting title of Court and cause, is as follows:

The Municipality of Victoria, Province of Tarlac, Philippine Islands, through its Attorney Felipe Buencamino, appears and, answering plaintiff's complaint, alleges:

1.

That defendant denies, generally, all the allegations of the complaint.

2.

That defendant specifically denies the allegations contained in paragraphs 4, 5, 6 and 7 of complaint.

As a special defense, defendant alleges:

(*a*) That the plaza described in Paragraph 4 of the complaint was laid out at the time this barrio of the Municipality of Tarlac was separately incorporated as a town, in eighteen hundred and fifty-five;

(*b*) That the Parish of Tarlac, was established several years after the incorporation of the town and therefore has no right to the plaza now claimed by the plaintiff;

(*c*) That defendant has sustained damages by reason of the filing of the complaint herein;

Wherefore, the undersigned prays the Court to enter judgment dismissing the plaintiff's complaint, with costs, and awarding damages.

Manila (for Tarlac), P. I. February 6, 1908.

(Signed) FELIPE BUENCAMINO,
Counsel for Defendant,
No. 331 Salinas, San Nicolas, Manila.

4 In the Session Book of this court, and referring to the session held on the 20th of March, 1908 (10 a. m.), presided over by the Honorable Julio Llorente, Judge of the Court of First

Instance for the Fourth Judicial District, the following entry relating to the above-entitled action appears:

Present: Attorneys Rohde, in behalf of plaintiff, and Felipe Buencamino, in behalf of defendant.

Counsel for plaintiff, Mr. Rohde, introduced in evidence the testimony of Casimiro Tañedo, sixty-seven years of age, a farmer by occupation and a native of Tarlac, Province of Tarlac; Cirilo Vergara, Parish Priest of Victoria, Province of Tarlac, and resident thereof; Mariano Rigor, fifty-three years of age and resident of the municipality of Victoria, Province of Tarlac; Regino Ricor, sixty-four years of age, a laborer by occupation and a resident of Victoria, Province of Tarlac; Eusebio Natividad, fifty years of age and Parish Priest of Tarlac, Tarlac.

Whereupon counsel for plaintiff rested his case.

Counsel for defendant then introduced evidence consisting of the testimony of Fermin Tolentino, sixty-eight years of age, a laborer by occupation and a resident of the Municipality of Victoria, Province of Tarlac; Ignacio Villarta, a native of Candon, Ilocos Sur, and a resident of Victoria, Province of Tarlac; Mariano Caita, a native of Candon, Province of Ilocos Sur, and a resident of Victoria, Province of Tarlac; Mariano Ricor, sixty-nine years of age, a laborer and a resident of the town of Victoria, Province of Tarlac, and Pedro Mariano, thirty-five years of age, Municipal President of Victoria and a resident thereof. He also introduced in evidence Exhibits marked "1" and "2" for identification.

Counsel for plaintiff objected to the admission of the former and made no objection to that of the latter.

After all the evidence was in, both counsel for plaintiff and defendant made their oral arguments.

The stenographic notes of the testimony of the witnesses for plaintiff and defendant, respectively, as well as the documentary proof introduced by defendant as aforesaid, and which are attached to the record, are hereby made a part of this bill of exceptions.

On June 19th, nineteen hundred and eight, the Honorable Julio Llorente, Judge of the Fourth Judicial District, rendered a decision against the defendant, declaring that the Parish Church of Victoria, of the Roman Catholic Apostolic Church, had a better right to the possession of the land described in the complaint and directing that defendant vacate the said land and pay the costs of this action. The decision is in the following words and figures, to-wit:

Decision.

The prayer of the complaint is that the land as described therein be adjudged to be the property of the Parish Church of Victoria, of the Roman Catholic Apostolic Church, and that defendant be directed to vacate the said land and pay the costs of this action.

From the result of the trial the Court makes the following findings:

(1) That the former owner of the land in question ceded the

same to the town of Victoria, which in turn transferred it to the Parish of said town and, consequently, to the Roman Catholic Apostolic Church;

(2) That the possession of the land in question by the Parish Church of Victoria dates back more than forty years. The
6 parish priests of the said town of Victoria were the persons who actually occupied the land, cultivating the same, grazing and pasturing their horses and planting trees thereon;

(3) That in nineteen hundred and one the municipality of Victoria occupied the said land by its own authority, without the consent of the plaintiff.

In view of these facts, the court finds that the parish church of Victoria has a superior right to the possession of the land in question. It is to be noted that one of the witnesses for the defendant testified that the acolytes of the town church raised crops on that land and that another witness for the defendant testified that the priests sowed rice and wheat there. Considering, further, the symmetry with which the trees have been planted (Exhibit "A"), it would seem that this was carried out under systematic, preconceived plan. The avenues formed by the trees lead to the church and to the convent, and on the other hand it is hardly to be believed that either the church or the convent had no more land than that upon which it stands—not even a small surrounding plot.

It is therefore ordered that judgment be entered declaring that the parish church of Victoria, of the Roman Catholic Church, has a superior right to the possession of the land described in the complaint and directing that defendant vacate the land and pay the costs of this action.

It is so ordered.

(Signed) JULIO LLORENTE.
Judge of the Fourth Judicial District.

Tarlac, Tarlac, P. I., June 19, 1908.

To the foregoing decision, and on the 26th of June, nineteen hundred and eight, defendant excepted in writing, and on the same date moved the court for a new trial, upon the ground
7 that the said decision was contrary to the weight of the evidence, and gave notice, that in the event that his said motion for a new trial was denied, it would prosecute an appeal to the Supreme Court of these Islands by means of a bill of exceptions.

By an order made on the 27th of July, nineteen hundred and eight, the court overruled the said motion for a new trial, and on the 1st of August, nineteen hundred and eight, defendant filed his bill of exceptions.

Wherefore, the undersigned prays this court to certify the foregoing bill of exceptions, that the same may be duly transmitted to the Supreme Court of these Islands.

Manila (for Tarlac), July 31, 1908.

(Signed) FELIPE BUENCAMINO.
Counsel for Defendant.
No. 331 Salinas, Tondo, Manila.

Received copy August 1, 1908.
(Signed) HARTIGAN & ROHDE,
Counsel for Plaintiff.

The foregoing bill of exceptions was received by yesterday's mail, and it is now forwarded to San Fernando, Pampanga, to be attached to the record and for certification by the Honorable Judge.
Tarlac, August 3, 1908.
(Signed) T. BESA SOLITARIO,
Clerk of Court.

8 (Title of Court and Cause.)

Comes now the plaintiff, and hereby expresses his conformity with the bill of exceptions filed by counsel for defendant.
Plaintiff asks that the appellant municipality give an appeal bond in the sum of one thousand dollars, Philippine currency.
Manila (for Tarlac), August 3, 1908.
(Signed) HARTIGAN & ROHDE,
Counsel for Plaintiff.

Received copy.
(Signed) FELIPE BUENCAMINO,
Counsel for Defendant.

The foregoing prayer having been received this day by mail, it is now forwarded by the undersigned to the Court of First Instance of San Fernando, Pampanga, for proper action by the court.
August 5, 1908.
(Signed) T. BESA SOLITARIO,
Clerk of Court, Tarlac.

Received this 7th day of August, 1908.
(Signed) MARCIAL U. CALLEJA,
Deputy Clerk, Court of First Instance, Pampanga.

9 (Title of Court and Cause.)

Order.

In conformity with appellee's request, it is hereby ordered by the court that the appellant give a bond in the sum of one thousand dollars, Philippine currency, to secure the judgment entered herein, in case the same be confirmed either in whole or in part.
It is so ordered.
(Signed) JULIO LLORENTE,
Judge of the Fourth Judicial District.

A copy of the foregoing order was immediately sent to counsel, to which I certify.
(Signed) T. BESA SOLITARIO,
Clerk of Court, Tarlac.

10 (Title of Court and Cause.)

Exception.

Comes now the undersigned attorney, in behalf of defendant, in the above-entitled cause, and respectfully excepts to the order of the court dated September 1, 1908, directing that defendant give a bond in the sum of one thousand dollars, Philippine currency, in connection with its appeal to the Supreme Court of these Islands.

Manila, September 4, 1908.

(Signed) FELIPE BUENCAMINO,
Counsel for Defendant, 331 *Salinas, Tondo, Manila, P. I.*

Received by mail this 5th day of September, 1908.

(Signed) T. BESA SOLITARIO, *Clerk*.

VICTORIA, TARLAC, P. I., *October* 2, 1908.

To the Clerk of the Court of First Instance, Tarlac.

SIR: In compliance with the order of the Court of First Instance for the Fourth Judicial District, dated September the 1st last, I have the honor to enclose herewith a bond in the sum of one thousand pesos, in connection with the appeal of the defendant municipality in Civil Cause No. 119.

Please acknowledge receipt.

Respectfully,

(Signed) PEDRO MARIANO,
Municipal President.

11 (Title of Court and Cause.)

Whereas the Municipa-ity of Victoria, the defendant in the above-entitled cause, has appealed to the Supreme Court of the Philippine Islands from the judgment entered against it in the said cause in the Court of First Instance on the 15th of June of the present year nineteen hundred and eight, directing the said municipality to vacate the land in question and to pay the costs of this action:

Now, therefore, in consideration thereof, and an appeal having been allowed, we, the undersigned, hereby jointly and severally bind ourselves in the sum of one thousand dollars, Philippine currency, and promise that, in case judgment be entered on appeal in favor of the plaintiff, the defendant shall pay to plaintiff all damages to the extent of one thousand pesos.

In witness whereof, we hereby sign this obligation, at Victoria, this second day of October, nineteen hundred and eight.

(Signed) MARTIN GAYLA.
" EUSEBIO VALDEZ.

(Signed) VALENTIN GAMALINDA, *Witness.*
(Signed) GAVINO MARIA AGUSTIN, *Witness.*

We, Martin Gayla and Eusebio Valdez, the sureties whose signatures are attached to the foregoing obligation, having been first duly sworn, each for himself says that he is a resident and property owner of this province and that he is solvent in the sum specified in the said obligation as a penalty, exclusive of all debts and liabilities and property exempt from execution.

12 Cedula No. 138,153, issued by this municipality February 1st, 1908.

MARTIN GAYLA.

The undersigned has no personal registration tax certificate, he being over sixty years of age, according to a certificate issued by the Secretary of the Municipality of this town, dated October 2, 1908.

EUSEBIO VALDEZ.

Subscribed and sworn to by the aforesaid parties, after exhibiting to me, the former his personal tax certificate, above described, and the latter exhibiting none, he being over sixty years of age, this second day of February, 1908.

(Signed) JUAN NEPOMUCENO.
Notary Public.

My commission expires December 31, 1908.

Approved:

(Signed) JULIO LLORENTE, *Judge.*

13 (Title of Court and Cause.)

Order.

I, Julio Llorente, Judge of the Court of First Instance of Tarlac, Fourth Judicial District, do hereby certify that the bill of exceptions herein filed is correct and contains all the evidence introduced and allowed at that trial of the above-entitled cause.

(Signed) JULIO LLORENTE,
Judge Fourth Judicial District.

Copy of the foregoing order was sent to the parties and the bill of exceptions is hereby transmitted to the Honorable Supreme Court, through the Clerk thereof, this 15th day of October, nineteen hundred and eight, to which I certify.

(Signed) T. BESA SOLITARIO,
Clerk of Court, Tarlac.

SUPREME COURT OF THE PHILIPPINE ISLANDS,
CLERK'S OFFICE.

Filed October 17, 1907.

(Signed) J. E. BLANCO, *Clerk.*

14 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Province of Tarlac.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Plaintiff,
vs.
THE MUNICIPALITY OF VICTORIA, Defendant.

Appearances: Attorney Rohde for plaintiff and Attorney Felipe Buencamino for defendant.

Counsel for plaintiff, Mr. Rohde, introduced as his first witness Casimiro Tañedo Miguel.

CASIMIRO TAÑEDO MIGUEL, having been duly sworn, testified that he was sixty-seven years of age, a farmer by occupation and a native of Tarlac, Province of Tarlac.

Questions by Mr. ROHDE:

Q. Have you ever lived in the town of Victoria?
A. I live there at present.
Q. How long have you lived there?
A. Since the revolution.
Q. Have you known the church of the town of Victoria for many years?
A. Yes, sir.
Q. How many years?
A. About thirty years, less than forty years.
15 Q. Do you know the land known as the Plaza of the church of Victoria?
A. My knowledge extends back to the time the first parish-priest came to Victoria.
Q. The question is, Whether or not you know the land.
A. Yes, sir.
Q. Who was formerly the owner of the land?
A. My knowledge*d* extends back to the time the first priest came there—the priest who was in charge of the land.
Q. What year was that?
A. I do not remember.
Q. More or less?
A. Some forty years ago.
Q. Did your father ever live in or own any property in Victoria?
A. Yes, sir, he owned land there.
Q. Was your father in possession of that fund for any length of time?
A. Yes, sir, because the land where the church now stands was formerly a carabao corral.
Q. Who owned the corral?
A. It belonged to my deceased father.

By the COURT:

Q. You mean the land occupied by the church?

A. Yes, sir, all that field, including the corral, the gate and the field where the carabaos grazed.

Mr. ROHDE:

Q. Do you know whether or not your father ever donated that land to the church?

A. He ceded the land to the church, because my father was
16 the first founder of the town of Victoria, and for that reason the barrio was named San Vicente.

Q. For how many years did your father keep that carabao corral there?

A. I don't know. When I reached the age of reason the corral was already there and continued there until the town of Victoria was incorporated, and my father filled in the land where the church now stands.

Q. Can you name the streets which at present constitute the boundaries of that Plaza?

—. The present names of the streets I do not know, but I will show you that they are the four streets around the church through which the procession usually passed.

Q. The church and the convent stand almost in the center of the land, do they not?

A. I think they do.

Q. And how long did the parish priest of Victoria continue in the quiet and uninterrupted possession of that Plaza.

A. Up to the time of the revolution.

Q. How long before the revolution?

A. Until shortly before the revolution.

Q. That was about the year 1898, was it not?

A. To be sure, about 1896 or 1897.

Q. What is there in the Plaza now?

A. I think the market is there now, and some newly-built houses; also a school-house.

Mr. BUENCAMINO:

Q. You said that you were acquainted with the parish of Victoria?

A. Yes, sir, I did.

17 Q. What do you mean by the parish of Victoria?

A. The parish-priest, Father M. B.

Q. Then, in your opinion, the parish is the parish-priest?

A. The parish priest is all that I know.

Q. Then you don't know what the parish itself is?

A. Yes, the convent and the church.

Q. You said that you had lived in Victoria for about forty years, did you not?

A. I did not say that I had lived there but that I had knowledge that the priest had been in possession for about forty years. My deceased father is the one who lived there for many years.

Q. You had knowledge of the fact that the priest was in possession of the plaza, did you not?

A. From seeing him cultivating the land I judged that he was in possession.

Q. Do you mean to say that the priest bought the plaza?

A. I do not mean to say that he bought it.

Q. Do you mean to say that the priest acquired the plaza as a donation from some person?

A. Yes, sir.

Q. Who was that person?

A. When the town was founded my father ceded the land to the town, and the principal citizens of the town donated the land to the priest.

Q. According to your statement, then, your father donated the land to the town, and the principal citizens of the town in turn gave it to the priest?

A. Yes, sir.

18 Q. How do you know that the principal citizens of the town gave that land to the priest?

A. Because I saw it myself.

Q. Were you one of the principal citizens of that town?

A. Here in Tarlac, yes.

Q. Do you know whether the Gobernadorcillo of the town had any authority to donate public property, for instance the city hall, to the priest of the town, to the Pope or to anybody else?

A. Yes, sir.

Q. You mean as such Gobernadorcillo?

A. Not as Gobernadorcillo, but with the consent of the principal citizens of the town he could.

Q. Without even consulting His Majesty's Government?

A. I have always noticed that the principal citizens of the town, before making a requisition for a priest, would build the church and convent, and then the church authorities, if they deemed it convenient, would send a priest; and as the Commissioners of Victoria said that the people could support one they sent a priest and the principal citizens of the town turned everything over to him.

Q. Did you see that deed of transfer?

A. No, sir.

Q. Then, whence did you get that idea?

A. I was present when the principal citizens of Victoria turned the property over to him.

Q. When was that? Please state the date?

A. I don't remember, now.

Q. Who were the principal citizens of that town?

A. Those whom I can remember now were Captain Mariano Rigor and one Regino Rigor, Captain.

Q. That is all.

19 By Mr. ROHDE:

Q. Did your father donate that land to the principal citizens of the town, to be used as the church plaza?

A. Yes, sir.

Q. Was the cession by your father made at the same time that the principal citizens of the town ceded the land to the priest?

A. Some four or five years.

Q. But with the understanding that it was to be devoted to the use of the church?

Mr. BUENCAMINO: I object to the question, as leading.

The COURT: Objection sustained.

Mr. ROHDE: That is all.

Cross-examination.

By Mr. BUENCAMINO:

Q. You said that your father was formerly the owner of the land where the church now stands?

A. Yes, sir.

Q. You also said that he was the owner of the land of the plaza?

A. Yes, sir. This faced the carabao corral, and there were no people there at that time.

Q. What kind of title did your father have?

A. As the founder of that place.

Q. And who was born first—your father or the place?

A. The place was born first.

Q. And how was it possible that your father could have founded that place if the place was already in existence when your father was born?

The court warned counsel that he must not dispute with the witness.

Q. And is that all the title that your father had to the land in question?

A. Yes, sir.

Q. He had nothing more, did he?

A. Nothing more.

Q. Did he not buy the land from the Spanish Government?

A. No; he merely asked for permission to establish his corral there.

Q. That is all.

CIRILO VERGARA, Parish Priest of Victoria, Province of Tarlac and a resident thereof, having been duly sworn, testified as follows:

By Mr. ROHDE:

Q. How long have you been the parish priest of the town of Victoria?

A. Since the Revolution.

Q. In what year?

A. Since the year eighteen hundred and ninety-nine—about the month of May.

Q. When you took possession of the parish of Victoria, who occupied the church plaza?

A. When I arrived in Victoria, about that time, during the Revolution, the revolutionary government was in possession of the convent, and upon my arrival at Victoria I inquired of the revolutionary president himself about the church property, and he told me that this property was, first the church and second the convent and third the land belonging to the church.

Q. Were any other persons in possession of any part of the plaza or of the entire plaza?

21 A. No, sir.

Q. And did you take possession of the whole church plaza?

A. I did not take possession, because, as I have said before, when I arrived there the country was in a state of revolution, and that was what the residents of the town told me when I inquired about the church property.

Q. Were there any houses there?

A. No, sir.

Q. Can you give me the names of the streets which constitute the boundaries of the plaza?

A. To the best of my recollection—on the east, Calle San Ambrosio, formerly La paz; on the south, Calle Rizal, formerly Calle Real; on the west, Calle San Gabriel, formerly Gerona; and on the north, what was formerly Calle Pinac, now San Mariano.

Q. I will show you this plan marked Exhibit "A": can you tell me what it represents?

A. This is a plan of all the land belonging to the church, including the church itself and the trees.

Q. Who made that plan?

A. I made it myself.

Q. Are the measurements as shown on the plan correct?

A. Yes, sir, approximately correct.

Q. Are the names thereon shown correct?

A. Yes, sir.

Q. These dots on the plan—what do they represent?

A. They represent the trees that were planted by the former Spanish parish priests of the town of Victoria, and these dots around the land also represent almond trees, planted by the priests themselves.

22 Q. You refer to the green pencil-marks around the plaza?

A. Yes, sir.

Q. I now introduce this plan in evidence, and ask that the same be marked Exhibit "A."

Mr. BUENCAMINO: No objection.

The COURT: Let it be marked Exhibit "A."

Q. The buildings marked "convento" and "iglesia," within the plaza,—what are they?

A. They are the Catholic convent and church of Victoria.

Q. Do they occupy the same place as indicated on the plan, with reference to the plaza?

A. Yes, sir.

Q. Since what year have you been in possession of the plaza?

A. I was in possession of the entire plaza, but immediately after the inauguration of the new municipalities they took possession of all this property belonging to the church.

Q. Up to what year were you in possession of the entire plaza?

A. Up to the year nineteen hundred and one.

Q. And the municipality then commenced to build on the land of the plaza?

A. Yes, sir.

Q. Did you make any objection?

A. Yes, sir.

Q. And did they pay any attention to your objection?

A. They paid no attention.

Q. The almond trees around the plaza, were they planted in accordance with the general plan to encircle the plaza?

A. Yes, sir; they were planted all around the land belonging to the church.

Q. That is all.

23 Cross-examination:

By Mr. BUENCAMINO:

Q. You have stated that you went to Victoria as parish priest during the revolution. Now, as we have had two revolutions—one in eighteen hundred and ninety-six and the other in eighteen hundred and ninety-eight—, will you kindly specify to which of the two you refer?

A. I mean the revolution of eighteen hundred and ninety-eight—the last one.

Q. Prior to that date, Father, will you kindly tell me whether or not you were there as coadjutor of Victoria or as the parish priest?

A. Prior to that date I had never been in Victoria, either as coadjutor or as a parish priest.

Q. Then, my dear sir, how do you know that those trees were planted by the priests who preceded you? Was it by hearsay—from what others told you, was it not?

A. Because the principal citizens of Victoria have so stated to me.

I now ask the court that there be stricken from the record so much of the testimony of this witness as appears to be hearsay.

The COURT: Granted.

Q. You have also said, sir, that you were in possession of the plaza now here in dispute up to the year nineteen hundred and one, have you not?

A. Yes, sir.

Q. And when did you first enter into possession of the plaza?

A. Immediately after the revolutionists ran away and vacated the church property.

24 Q. Did you take possession then?

A. Yes, sir.

Q. On what date?

A. It was in eighteen hundred and ninety-nine or in nineteen

hundred, if I remember correctly. I arrived in Victoria about the middle of eighteen hundred and ninety-nine.

Q. Did the American forces enter Victoria?

A. Yes, sir.

Q. On what date, sir?

A. In the month of November, or thereabouts, in the year eighteen hundred and ninety-nine.

Q. When they entered the town where did they stay—did they stay at the convent?

A. Not immediately upon their arrival

Q. Did the Americans station any troops there for the protection of life and property?

A. When they first arrived they did not provide any protection for the town.

Q. Please state when they first furnished that protection?

A. I do not remember the date.

Q. Did the American authorities appoint a municipal presidente of the town, as it was customary, in order to protect the town?

A. Yes, sir—long afterward.

Q. Did you show to the military authorities the property that belonged to the church?

Mr. ROHDE: I object to the question, because counsel is too indefinite. Whether he showed them the property or not can have no bearing on this litigation.; It is a question perfectly incompetent.

25 The COURT: Objection overruled.

Q. Did you call the attention of the authorities to the existence of that property and to the fact that you had taken possession?

A. To the American authorities who came later to protect the town, yes sir, but to the municipal authorities appointed by them, no, sir.

Q. Did the Filipino authorities continue to use the convent and the plaza?

A. No, sir. Immediately after the American troops vacated the convent I moved in.

Q. That is all.

MARIANO RIGOR, fifty-three years of age and a resident of the municipality of Victoria, Province of Tarlac, having been duly sworn, testified as follows:

By Mr. ROHDE:

Q. Do you know the plaza of the church of Victoria?

A. Yes, sir.

Q. How long have you known it?

A. Since I attained the age of reason; I grew up there.

Q. And who planted the trees now in the church plaza?

A. The priests had them planted.

Q. And when you refer to the church plaza, do you mean the

land bounded by the four streets named Gerona, San Pablo, Pinac or La Paz and Calle Real or Rizal?

A. Yes, sir; but formerly the streets had other names.

Q. The plaza is a piece of improved land in the middle of which the convent and the church stand, is it not?

26 A. Yes, sir.

Q. Last year, was that plaza, or any part thereof, under cultivation?

A. At first, when the priests came there, they had some corn, rice, papaya and bananas planted there.

Q. All over the plaza or in only a part thereof?

A. About one-fourth of it was not planted.

Q. And what was there in that fourth part of the land?

A. At that time there was nothing there, but at present there are some trees which were planted by the priests.

Q. And those trees—how old are they?

A. They are not all of the same age.

Q. About when were those trees planted?

A. Some of them were planted in eighteen hundred and seventy-four.

Q. Do you know whether that is the same land where Vicente Tañedo formerly had a carabao corral, or have you no recollection of this?

A. I have been told so by others, for I was not there at that time.

Mr. BUENCAMINO: I ask that this witness's testimony be stricken out.

The COURT reserved its ruling on this point.

Q. Did the priests ever fence this plaza with anything other than trees?

A. Some of the priests fenced it in.

Q. To protect the crops?

A. Yes, sir; to protect the crops and the place where the horses were kept.

27 Q. Was it a corral?

A. Yes, sir.

Q. And during all the time that you can remember the priests were in possession of the plaza, were they not?

A. Yes, sir.

Q. Up to what year?

A. Since eighteen hundred and sixty-eight.

Q. But up to what year?

A. Up to the time of the revolution.

Q. Approximately what year was it—eighteen hundred and ninety-eight?

A. At the time of the revolution the priests left the town.

Q. Was it in eighteen hundred and ninety-six or eighteen hundred and ninety-eight?

A. I think it was in eighteen hundred and ninety-eight.

Q. Are there many trees on the plaza now, sir?

A. Many.

Q. Are there big trees?
A. Big.
Q. And these trees suggest a general plan * * *

Mr. BUENCAMINO: I object to the question, as leading.
Mr. ROHDE: I withdraw the question.

Q. That is all.

Cross-examination:

By Mr. BUENCAMINO:

Q. When was the town of Victoria first established? You say that you were born there.
A. I was not born there; I simply grew up there.
Q. Where were you born?
A. At Candon.
28 Q. When did your father remove to Victoria? Do you remember the year?
A. My parents told me that they removed to the town when it was incorporated.
Q. What was Victoria before it became a town, if you remember?
A. They told me that it wasn't a barrio but a place where a few houses were built, and was known as Canarum.
Q. When you arrived in Victoria was there a parish priest there?
A. No, sir.
Q. How many years afterward was it before you had the first parish priest—was it five years or ten years?
A. According to my judgment, I think it was fourteen years.
Q. And when you arrived in Victoria was the plaza already in existence?
A. I have already said that I didn't know anything about it then, but was merely told, when I attained the age of reason.
Q. When you were fourteen years of age had you already attained the age of reason?
A. Yes, sir.
Q. Then, if you had been in Canarum for fourteen years before the first parish priests came there you must have attained the age of reason before that time.
A. I know when the priest arrived there.
Q. But was the plaza established before or after the priest arrived there?
A. Before; there was a plaza when the priest arrived there.
Q. Sir, you have stated that the priests planted the trees; did you ever see the priests plant the trees?
A. I never saw them plant the trees themselves, but they had others to plant them for them.
29 Q. And those who planted the trees had nothing to do with the municipal government, had they
A. Some of them did; others did not.
Q. Have the people or the municipality ever used that plaza for public celebrations?

A. All public celebrations were held there, but under the control of the priests.

Q. How do you know that it was under the control of the priests?

A. Why should I not know? When I was Captain, or Cabeza de Berangay (head tribesman) that was the custom.

Q. Do you not know that a certain governor once went there and ordered the fence made by the priests torn down?

A. Yes, sir, you are right. They were going to build a market at that place; the priests objected to it and closed the gate; the governor then went there and ordered the fence removed, and the priest had the fence repaired again and it was not very long afterward before an order was received by the Captain, and we were directed to go to Tarlac and report to the Prosecuting Attorney. The Prosecuting Attorney asked us who was the owner of the plaza, and we told him that it belonged to the church; and after we told him that the plaza belonged to the church the idea of establishing a market there was abandoned.

Q. Why did the Governor order the fence removed?

Mr. ROHDE: I object to the question, because the witness can have no knowledge of that.

The COURT: Objection sustained.

Q. The Governor went to Victoria at the request of some of the prominent citizens of the town, did he not?

Mr. ROHDE: I object to the question, because the only one who knows that is the Governor who gave the order.

The COURT: Objection overruled.

A. The principal citizens of the town did not send for him; I do not know why he went there.

Q. Then you do not know why the Governor went there, do you?

A. No, sir.

By Mr. ROHDE:

Q. Then, prior to the insurrection, the town always acknowledged that the plaza in question belonged to the church and to the parish?

A. Yes, sir.

Q. How long were you Municipal Captain of the town of Victoria?

A. Just one year.

Q. And Cabeza de Barangay (head tribesman)?

A. From eighteen hundred and seventy-four to eighteen hundred and ninety-four.

Q. That is all.

Cross-examination:

By Mr. BUENCAMINO:

Q. Why do you say that the town always recognized the priest as the owner of the plaza?

A. Not as the property of the priest but as the property of the church, and as the priest represented the church he also had control over the plaza.

Q. How do you know that it belonged to the church?

A. Because of the arrival there of the first parish-priest.

Q. Do you know whether or not the church ever bought that land?

31 A. It never bought it.

Q. Do you know whether or not it was donated to it by the Government?

A. It was donated by the town, as the Elders say.

Q. Do you know whether or not all land in the Philippines belonged to the Spanish Government?

A. I do not.

Q. Then, when you say that the land was donated you say so because in your opinion all the land in the Philippine Islands belonged to the inhabitants thereof—is that right?

A. I don't know that the people owned all the land of the Philippine Islands.

Q. Could you establish a town without the permission of the Spanish Government?

Mr. ROHDE: I object to the question, for it involves a point of law.

Mr. BUENCAMINO: I withdraw the question.

Q. That is all.

REGINO RIGOR, sixty-four years of age, a laborer by occupation and a resident of Victoria, Province of Tarlac, having been duly sworn, testified as follows:

By Mr. ROHDE:

Q. How long have you lived in Victoria?

A. I came from Ilocos; I don't remember the date when I removed to Victoria.

Q. Have you been Municipal Captain of the town of Victoria?

A. No, sir.

Q. Were you ever Cabeza de Barangay?

A. Yes, sir.

32 Q. When, approximately?

A. I think about forty years ago.

Q. Was there a parish priest in the town of Victoria at that time?

A. Yes, sir.

Q. When you were a cabeza de barangay, who was in possession and control of the plaza near the church?

A. I saw that the priest was in charge of it.

Q. Only the priest?

A. Yes, sir; he was the only priest there, and was in charge of everything.

Q. Did he cultivate part of the plaza?

A. All the land around the church.

Q. Who planted the trees around the church?

A. The priests.

Q. And the trees on the plaza—who planted them, or who had them planted?

A. They themselves (referring to the priests), because they were the ones in charge.

Q. Did the priests continue in the possession of the plaza during all that time up to the revolution against the Spaniards?

A. As I was then out on the farm, I cannot say whether the priests were then in possession or not.

Q. I mean, up to the time of the revolution. I don't mean after the revolution; I mean at the time that the revolution broke out?

A. That's just what I mean.

Q. But were you not then in town?

A. I was not.

33 Q. When did you leave the town?

A. I was living in a barrio.

Q. Until what year were the priests in possession of the plaza, as far as you know?

A. That's exactly what I don't know.

Q. Who was in possession of the plaza in eighteen hundred and ninety; that is, eighteen or twenty years ago?

A. I used to see the priests there.

Q. And there was nobody else occupying the plaza?

A. Yes, the successive priests.

Q. Yes, but were there any houses or buildings on the plaza?

A. Not all over the plaza, no, sir.

Q. That is all.

Cross-examination:

Mr. BUENCAMINO:

Q. Do you know who owns the plaza here in dispute?

A. With reference to that plaza, the only owner I know of is the church.

Q. Were you councilman of the municipality of Victoria in July, nineteen hundred and five?

A. Yes, sir.

Q. Do you remember having attended a meeting of the council on the 17th of July, nineteen hundred and five?

A. Yes, sir.

Q. Do you remember that at that meeting it was resolved unanimously that the plaza now in controversy was the property of the municipality?

A. Yes, that was the object of the meeting called by our president.

34 Q. And did you sign the minutes of that session?

A. Yes, sir. At that meeting all that our president said was that "the object of this meeting relates to the action of the former

councilmen of this city, with reference to the plaza," and he asked me whether I agreed to that and I told him I did not because I knew that the plaza belonged to the church and that the priest was the one in charge of it. The president then said, "If you are alone you can't do anything; you better sign here." My colleagues were of opinion that the plaza belonged to the municipality, but I dissented, and being alone was unable to do anything.

Q. And did you sign?

A. Yes, sir.

Q. Did you note your objection?

A. I told the Secretary to make a record of it, but I don't know whether he did it or not, as I do not understand Spanish.

Q. But you have said that you signed the minutes, have you not?

A. When I signed the paper they told me that "your objections have been duly noted in the minutes." That's what they told me.

Q. You say that the plaza belonged to the church?

A. Yes, sir.

Q. Do you know whether or not the church bought the land?

A. I don't know whether or not the church ever bought the land, but I do know that it belongs to the church, because the priest was always in control.

Q. Did the people of the town also use the plaza for public celebrations?

A. When the day of our patron saint came round we cele-
35 brated the feast there with shows and fireworks and other displays, according to the local custom. I, as Captain of the town, and the other prominent citizens, would report to the priest and state to him our desire whenever we wanted to use the plaza, and the priest would say "All right, the plaza is big enough."

Q. Which was established first—the church or the town?

A. The town was established first, and afterward the church.

Q. When the town was established, was the church also erected?

A. The plaza was already in existence, and the people built the convent and the town.

Q. Then you mean to say that the church was built after the plaza was laid out?

A. Yes, sir.

Q. And who used the plaza before the church was built?

A. We, the people of the town, did.

Q. Then it was a public plaza, was it not?

A. For the priest—that is to say, for Holy Church.

Q. But you have just said that there was no church there at that time?

A. Before the church was built the people would pass through there and use the place for pasturing carabaos and for other purposes.

Q. The plaza did not belong, as a matter of fact, to Peter or to John, but to the whole town, did it not?

A. The land belonged to the people until the priests arrived.

Q. Do you know how the ownership of the plaza was transferred to the church?

A. When the first priest arrived there the principal citizens of the town turned the plaza over to him; also the church and convent, and after the land was delivered to the priest, he, the priest, ordered
36 the same plowed and sown in rice, wheat, papaya and other fruits.

Q. How old are you now?

A. Sixty-four years old.

Q. When did that delivery take place—that is, the delivery of the land by the prominent citizens of the town, to the priest,—in what year was it?

A. I can't remember now, because this happened long ago, and I never made any memorandum of it.

Q. Were you a child then?

A. No, sir.

Q. How old were you?

A. I think I was about twenty years of age—over twenty years.

Q. When did the first priest arrive there—was it fifty or sixty years ago? Or how long ago?

A. My memory is that the first priest arrived there some forty years ago.

Q. Were you one of the principal citizens of the town at the time the priest arrived there?

A. Yes, sir.

Q. Were you a cabeza de barangay at that time?

A. I don't remember whether I was or not.

Q. Were you Gobernadorcillo (petty governor)?

A. No, sir, I became petty governor later.

Q. Then you don't know whether or not you were a cabeza de barangay at that time?

A. I do not.

Q. And why do you say that you were one of the principal citizens of the town when the first priest arrived?

37 A. I was not a principal citizen when the first priest, Father Buan, arrived there. I did not say that.

Q. When the first priest arrived there what were you?

A. I don't remember whether I was a cabeza de barangay or not.

Q. Then how do you know that the principal citizens of the town delivered the land to the first priest, if you were not one of such citizens?

A. Because I was present.

Q. How were you present?

A. Because the prominent citizens went to the convent and, together with the priest, walked along the street and through the plaza.

Q. Where were you living at the time—in the barrio or in town?

A. In town.

Q. And where do you live now?

A. In the barrio of Malasio.

Q. Can you mention the name of the governor who made the delivery at that time?

A. I don't remember.

Q. Do you remember the name of the lieutenant-governor?

A. The lieutenant-governor at the time was my grandfather, who is now dead.

Q. Was the delivery to the priest made only to give him control of the plaza or to transfer the ownership thereof to him?

A. I don't know anything about ownership; all that I know is that the prominent citizens said that they had delivered to the priest both the plaza and the church?

Q. Then you are unable to state to the court whether they actually transferred the ownership of the property or not?

38 A. I don't know, because I haven't seen any paper to that effect.

EUSEBIO NATIVIDAD, fifty years of age, Parish Priest of Tarlac, tarlac, having been duly sworn, testified as follows:

By Mr. ROHDE:

Q. Have you ever been parish priest of the town of Victoria?

A. No, sir.

Q. Do you know the town?

A. Yes, sir.

Q. Do you know the church and convent?

A. Yes, sir.

Q. Since when?

A. Since I became parish priest of Tarlac, and I have been here eighteen years and two months.

Q. Have you occasionally officiated in that town as a priest?

A. I used to go there occasionally.

Q. You say that you have known the church and plaza for about eighteen years, do you not?

A. Yes, sir.

Q. Who has been in possession of the plaza during those eighteen years? The priests of the town, to the exclusion of all others?

A. Yes, sir.

Q. Up to what year?

A. Up to the time of the revolution, when the friars were compelled to leave the town.

Q. That is all.

39 Mr. BUENCAMINO: I have no further questions to ask.

Mr. ROHDE: The plaintiff rests.

Mr. BUENCAMINO: In the first place, I will introduce in evidence this document, which is a written report by the president and municipal council of Victoria, giving a history of the town of Victoria, as proof of events as they have transpired.

Mr. ROHDE: I object to the admission of this document in evidence, because it is not sworn to.

The COURT: Let it be admitted in evidence and marked Exhibit "I".

Mr. BUENCAMINO: I will introduce in evidence Exhibited marked "No. 2."

Mr. ROHDE: I have no objection.
The COURT: Exhibit No. 2 admitted.

Witnesses for the Defendant.

Mr. BUENCAMINO: I now introduce Fermin Tolentino, as witness for the defendant.

FERMIN TOLENTINO, sixty-eight years of age, a laborer by occupation and a resident of the municipality of Victoria, Province of Tarlac, having been first duly sworn, testified as follows:

By Mr. BUENCAMINO:

Q. Where were you born?
A. At Porac, municipality of Guagua.
Q. When did you remove to Victoria?
A. I came to Victoria when I was about fifteen years of age, as far as I can remember.
Q. When you first came to Victoria was it already a town?
A. It was then a barrio.
40 Q. And have you lived in the same place ever since?
A. Yes, sir, within the limits of the town.
Q. Without interruption—have you ever lived in any other place?
A. I have never left the place.
Q. Were you ever sentenced by any court of justice to a term of imprisonment?
A. Before God, No, sir.
Q. Do you remember when that barrio was converted into a town?
A. According to my recollection, that barrio was converted into a town some fifty years ago.
Q. When the place was converted into a town, was there a plaza there already?
A. No, sir.
Q. And when was the plaza laid out?
A. When the first Captain or petty governor was appointed.
Q. And at the time the petty governor was appointed was there already a church there?
A. Yes, sir.
Q. Was it a regular church or a chapel?
A. A church, where the people went to hear Mass.
Q. Was there a parish priest there?
A. No, sir, there was no permanent priest, but a Filipino priest would occasionally go there.
Q. You mean to say that it had not been as yet organized as a regular parish?
A. There was a church and the convent built by us, and then we petitioned for a priest to come to the convent.
Q. And when was the plaza founded?
41 A. When the successor to the Captain of the town was appointed the plaza was established.

Q. Was the plaza established as the property of the church or as the property of the town?

Mr. ROHDE: You are asking the witness about a proposition of law and not about a question of fact.

Mr. BUENCAMINO: I withdraw the question, and will ask the witness whether the plaza was bought by the church?

A. No, sir.

Q. Was the plaza donated to the church by the people?

A. No, sir.

Q. Who had the use of the plaza?

A. The people of the town.

Q. Does the plaza belong to the priest or to the town?

A. To the town.

Q. Does it belong to the church?

A. No, sir.

Q. Do you know who planted the trees now growing on the plaza?

A. Yes, sir; I was appointed by the Captain of the town to watch the men who were planting those trees, because I was at that time an official of the Government.

Q. Who ordered those trees planted?

A. The Captain of the town.

Q. Did he order them planted?

A. Yes, sir.

Q. Have the people of the town ever used that plaza for public celebrations, such as dramatic plays, fireworks, et cetera?

A. Yes, sir. All celebrations by the town took place there.

Q. Do you know whether a permit was first obtained for
42 that purpose?

A. The people never asked for such permission—it all depended on the Captain of the town.

Q. How do you know that?

A. Because I lived next door to the president's house; so, I knew all about it.

Q. Were you ever a member of the municipal council?

A. Yes, sir; I was appointed a sort of shepherd of the cows and carabaos, and I was always there

Q. And whose were those cows and carabaos?

A. There were no cows at all: I say that merely to illustrate: I was the head tribesman.

Q. Do you mean to say that you were a shepherd or that you were a cabeza de barangay (head tribesman)?

A. I mean to say that I was a cabeza de barangay.

Q. And as such cabeza de barangay you knew that no permission from the priest was necessary in order to use the square or plaza?

A. It was not necessary.

Q. That is all.

Redirect examination.

By Mr. ROHDE:

Q. Do you remember who it was that sowed rice in the plaza?
A. Yes, sir.
Q. Who was it?
A. The people of the town.
Q. How was that? Did some of the residents of the town have a piece of land there where they grew rice, or was that rice
43 grown by order of the priest?
A. The rice was grown there with the knowledge and consent of the Captain of the town.
Q. And who gathered the crop?
A. The acolytes.
Q. That is all.

IGNACIO VILLARTA, a native of Candon, Ilocos Sur, and a resident of Victoria, Province of Tarlac, having been first duly sworn, testified as follows:

By Mr. BUENCAMINO:

Q. When did you remove to Victoria?
A. Before there was a town captain there.
Q. Was it already a town, or merely a barrio, when you went there?
A. It was already a town, and this was when the Captain took possession.
Q. Was there a parish priest there at that time?
A. No, sir.
Q. Do you remember whether the present plaza was then in existence?
A. During the time of the first captain there was as yet no plaza there, and it was during the incumbency of his successor that the plaza was laid out.
Q. How many years elapsed between the end of the first captaincy and the appointment of the successor?
A. One year, because town Captain *were* appointed every year.
Q. Then the plaza was established during the incumbency of the second petty governor?
A. Yes, sir.
44 Q. Was there a parish priest there at the time?
A. Not at that time.
Q. Had the church already been built?
A. No, sir.
Q. But was there a chapel?
A. Yes, sir, a chapel was built when the plaza of the town was laid out.
Q. And the plaza was turned over to the church, was it?
A. No, sir.
Q. Did the plaza belong to the town?
A. Yes, sir.

Q. Always and up to the present time?
A. Yes, sir.
Q. Have you ever been a prominent citizen of the town,—that is to say, a petty governor or a cabeza de barangay, of the town of Victoria?
A. I have never been a captain or a cabeza de barangay for a long time.
Q. Did the town use that plaza for public festivities whenever it wanted to do so?
A. The plaza was established for the celebration of town feasts.
Q. Was it necessary to secure the permission of the priest?
A. No, sir.
Q. Could the people go through the plaza without asking permission from the priests?
A. Yes, sir, because the priests never had anything to do with the plaza, so far as I know.
Q. Do you know the trees that are growing on the plaza?
A. Yes, sir.
45 Q. Who ordered those trees planted?
A. The petty governors would call a meeting of the cabezas de barangay, and direct them to plant the trees on the plaza, so as to provide shade for the market peddlers.
Q. Were there any shops there?
A. Yes, sir.
Q. That is all.

Mr. ROHDE: I have no further questions.

MARTIN CAITA, a native of Candon, Province of Ilocos Sur, and a resident of Victoria, Province of Tarlac, having been first duly sworn, testified as follows:

By Mr. BUENCAMINO:

Q. How long have you lived in Victoria?
A. Since the town was organized.
Q. Have you ever been cabeza de barangay, lieutenant—or petty—governor of the town of Victoria?
A. I have been a cabeza de barangay.
Q. For many years or just for one year?
A. For more than ten years.
Q. Which was established first—the parish or the town?
A. The town was established first, and then we built the church.
Q. When the town was established was the plaza also founded?
A. When the captain of the town took possession the plaza was laid out. He was the captain who surveyed it.
Q. Was the plaza turned over to the church?
A. No, sir.
Q. Did the plaza belong to the town?
A. Yes, sir.
Q. You mean, up to the present time?
46 A. Yes, sir.
Q. Have the people of the town always used that plaza, for public festivities?

A. Yes, sir; public celebrations were held there, and there were shops there.

Q. Did you know the last Spanish priest, named Father Ornia, of the town of Victoria?

A. Yes, sir, Father Carpo.

Q. Do you know whether that priest ever claimed any right to the possession of that plaza?

A. I was told that he surveyed the plaza.

Q. Do you know whether that priest ever claimed any title to the plaza—please answer my question?

A. We would not have permitted it.

Q. The priests that preceded him—did they ever claim to be the owners of that plaza?

A. No, sir, no priests ever did.

Q. And the trees on the plaza—who planted them?

A. We did.

Q. How—in what manner? By whose order? By direction of the captain?

A. By order of the captain of the town.

(TRANSLATOR'S NOTE.—Some testimony apparently omitted here by Spanish stenographer.)

Q. Whom do you mean when you say "they": who are "they"? Do you mean the cabezas de barangay?

A. We all held a meeting, the captain of the town being present, for the purpose of discussing the planting of those trees.

Q. That is all.

47 Cross-examination.

By Mr. ROHDE:

Q. You occasionally go to mass in that church, do you not?

A. I have not been in that church since the Filipino church was built.

MARIANO RICOR, sixty-nine years of age, a labor- and a resident of the town of Victoria, Province of Tarlac, having been duly sworn, testified as follows:

By Mr. BUENCAMINO:

Q. Where were you born, and when did you remove to Victoria?

A. I was born in Ilocos, and I do not now remember when I removed to the town of Victoira, but I think I was about seventeen years of age.

Q. Do you know the plaza here in dispute?

A. Yes, sir.

Q. To whom does that plaza belong, if you know?

A. To the town, because the town established it.

Q. Were you a principal citizen of that town—a cabeza de barangay or petty-governor of the town of Victoria.

A. Yes, sir, I was cabeza de barangay.

Q. For how long?

A. For eight years.
Q. And the plaza has always belonged to the town, has it not?
A. Yes, sir.
Q. And it has existed now for more than forty years, has it not?
A. When the plaza was surveyed the matter was reported to the captain of the town.
48 Q. How long ago was that?
A. About fifty-five years ago.
Q. And has the town always used that plaza for its own purposes and for public celebrations?
A. Yes, sir; whenever we had any celebrations they took place in the plaza—such as dramatic plays, greased poles, and other forms of recreation.
Q. And did you every time first secure the permission of the parish-priest?
A. No, sir.
Q. Do you know whether or not there are any trees now growing on the plaza?
A. There were no trees there until the Captain of the town ordered them planted.
Q. Whom did he order to plant them?
A. The policemen.

Q. That is all.

Cross-examination.

By Mr. ROHDE:

Q. You belong to the Filipino Independent Church, do you not, sir?
A. Yes, sir.
Q. Do you remember when the plaza was sown in rice, corn and wheat?
A. Yes, sir, I remember.
Q. Who reaped the harvest of wheat, rice and corn?
A. Father Mariano.
Q. When the town turned the plaza over to the Padre—do you remember the fact of the plaza being turned over to the padre?
A. It wasn't turned over.

Q. That is all.

49 PEDRO MARIANO, thirty-five years of age, Municipal President of Victoria and a resident of the said town, having been first duly sworn, testified as follows:

By Mr. BUENCAMINO:

Q. Do you know the plaza here in dispute?
A. Yes, sir.
Q. You have retained me to defend the title of the municipality to that plaza, have you not?
A. Yes, sir.

Q. Have you been duly authorized to do so by the municipal council?

A. Yes, sir.

Q. Has the municipal council ever met for the purpose of considering the question as to whether the plaza here in dispute is a public square or is private property?

A. Yes, sir.

Q. Was that during your incumbency or before that time?

A. Long before my time; it was in 1901.

Q. Did the municipality allow everybody to use the plaza of the town, without regard to religion or whether the persons belonged to the Filipino Independent Church or to the Roman Catholic Church,—that is, whatever their religious faith might be?

A. Not now, sir.

Q. And formerly?

A. Formerly the Filipino Independent Church was built but now the Roman Catholic Church stands there.

Q. My question is, Whether the municipality had prohibited the entrance to that plaza or whether the plaza belonged to the public?

50 A. The people are permitted to enter the plaza, because they have first secured the authority of the municipal council.

Q. Who asked for such permission or authority?

A. Both the priest of the Roman Catholic Church and the priest of the Filipino Independent Church.

Q. Has the municipal government ever made any discrimination in favor of any particular church?

A. No, sir.

Q. Have they been treated with equal consideration?

A. Yes, sir.

Q. How long has the municipality been in possession of that plaza?

A. According to the records which I have seen in the president's office, when I took possession, since the year eighteen hundred and fifty-five.

Q. Prior to the insurrection of eighteen hundred and ninety-eight did you live in the town of Victoria?

A. Yes, sir.

Q. Were you then over fourteen years of age?

A. Yes, sir.

Q. Did you then see that plaza?

A. Yes, sir.

Q. Who was in control of the plaza?

A. The municipality.

Q. Do you mean to say the whole municipality or the municipal council, or the town?

A. I mean the tribunal, that is to say, the municipal council.

Q. Were there any organized municipalities prior to the Revolution?

51 A. Yes, sir, there were.

Q. That is all.

Cross-examination.

By Mr. ROHDE:

Q. You say that when you took charge of the presidencia of the town you found documents which showed that the municipality had been in possession of the plaza since the year eighteen hundred and fifty-five. What documents are those to which you refer?

A. I refer to the annual report of my predecessors.

Q. Referring to that document upon which you base your statement, I would like to know the date of that particular report and the form in which it appears?

A. It refers to the year ninety-four?

Q. Do you mean the year ninety-four?

A. Yes, sir, the year nineteen hundred and four.

Q. You came across a report which was written in the year nineteen hundred and four?

A. Yes, sir, but I was unable to bring it with me.

Q. Did the municipality use the whole of the plaza bounded by the four streets, sir?

A. The municipality did not use it but owned it.

Q. The whole plaza?

A. Yes, sir.

Q. Also the church?

A. Not the church.

Q. But the whole plaza, up to the wall of the church?

A. The site where the church stands is separated from the land owned by the municipality.

52 Q. Where does the property of the church begin and where does the land of the municipality end?

A. The land where the church stands belongs to the church.

Q. And all the land which is not occupied by the church and convent belongs to the municipality, is that it?

A. Yes, sir.

Q. That is all.

Mr. BUENCAMINO: Defendant rests.

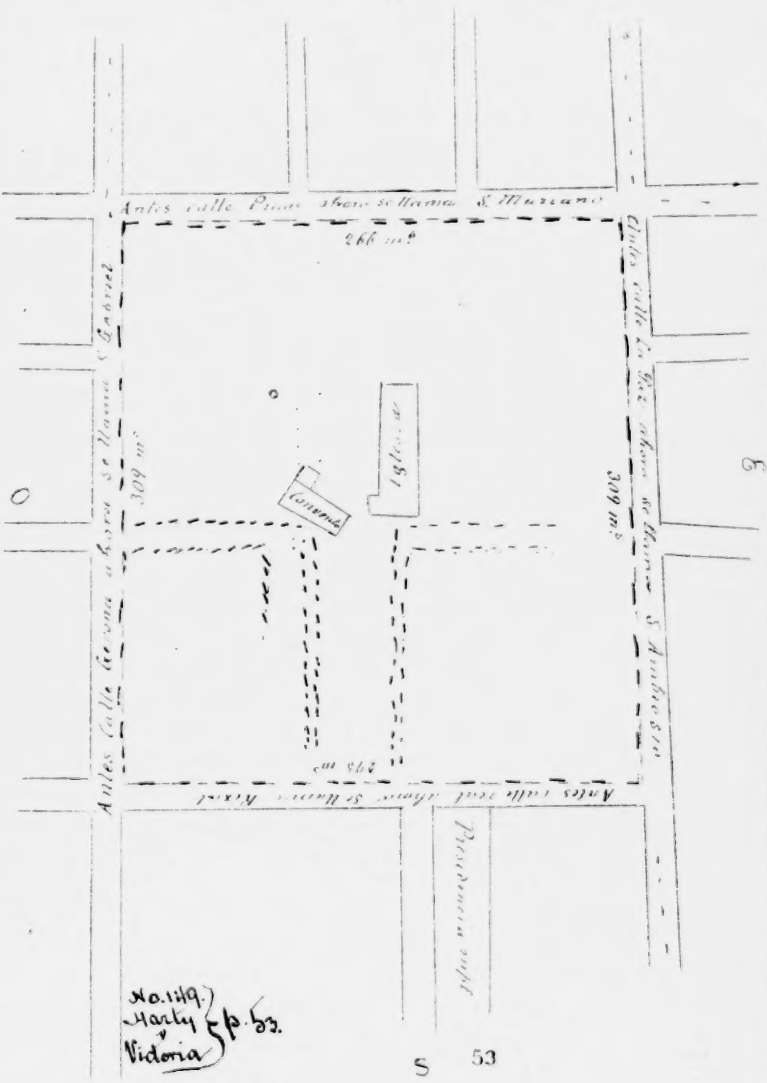
(Counsel for plaintiff and defendant then made their oral arguments and the trial was closed.)

I certify that the foregoing is a true and correct transcript of the stenographic notes taken by me at the trial of the above entitled case.

Tarlac, Tarlac, March 20, 1908.

(Signed) BENITO DE RAZON,
Stenographer and Interpreter, Court Fourth Judicial District.

(Here follows diagram marked p. 53.)


Antes calle Pinas ahora de Marina S. Marcano
266 m.
Antes Calle de Sta. Clara ahora de Marina S. Gabriel
309 m.
Iglesia
Campanil
298 m.
Antes calle Real ahora de Marina Hasta
Pertenencia de Iglesia

No. 119.
Harty 5 p. 52.
Victoria

54 EXHIBIT "I."

Annual Report of the Municipality of Victoria, Province of Tarlac, for the Year Nineteen Hundred and Six, as Required by Section 18, Paragraph N, of the Municipal Code.

General Description of the Municipality.

The town of Victoria was organized as a civil town on the 28th of March, eighteen hundred and fifty-five, by virtue of a superior order, its former name as a barrio being that of Canarum, and it belonged to the town of Tarlac, then within the Province of Pampanga. Its present boundaries are as follows:

On the north, starting at a point common to the three towns of Gerona, Tarlac and Victoria, and then on a straight line to the eastern boundary of the barrio of Espinosa, and from that point to a place called Naya, on the western part of the barrio of Balbaloto, which leads to Susubaen, according to the decree of the Supreme Government, of the 20th of May, eighteen hundred and sixty-two, and from that point to the mouth of the river Binituan, and thence on a straight line to the estuary named Badoc; on the east, commencing at a point on the estuary of Badoc, on a straight line to the river Bulaquid, according to a decree of the Supreme Government, of the 16th of June, eighteen hundred and seventy-nine, and from this point, following the course of the water, to the river Chico; on the west and south, starting at a point common to the three towns of Gerona, Tarlac and Victoria, which was fixed in the year eighteen hundred and sixty-two, at the place known as Parsuliñgan, the boundary-line follows a straight course to the middle of the line joining the church of this town of Victoria and Tarlac, which said point is on the northern extremity of the
55 barrio of Balibago, at two hundred meters from the highway. From this point the boundary is represented by a perpendicular line to the boundary-line between the two towns; thence following in a southeasterly direction across the road from Tarlac to Matayumtayum, at a place called Calangao. At this point the boundary-line changes its course to the east, crossing the highway leading to La Paz, six hundred meters south of the barrio of Matayumtayum, and thence in a direct line to the river Chico, in Pampanga province, stopping at a place called Bitucang-Manoc, where the river twice changes its course, the place taking its name from this peculiarity of the river, according to a decree of the Supreme Government, of the 8th of January, eighteen hundred and ninety-two.

Nature of the Land: Adapted to the cultivation of rice, sugarcane, corn, and other cereals and tubers.

Number of Barrios and Districts: Is composed of twenty-one barrios, divided into eleven districts, which form the jurisdiction of this municipality.

Number of Inhabitants: Sixteen thousand.

Number of Qualified Electors: One hundred and twenty-seven.

Languages Spoken: Castilian, English, Ilocano, Pampango and Tagalo.

Character of the People: Law-abiding and of good and philanthropic customs.

General Description of its Resources: Agriculture. The agricultural region of this municipality is adapted to the cultivation of all kinds of cereals, leguminous fruits and tubers, and of all kinds of garden produce, there being in addition thereto a large variety of fruit-bearing trees.

Although agriculture in this region is not very far advanced or developed, for the lack of work-animals, which constitute
56 the only means employed by the residents of the town for the tillage of their fields, and the lack also of sufficient capital for the development of its resources, the crop for this year has been one hundred and twenty per cent. greater than that of any previous year, particularly the rice crop. There is also a very noticeable effort on the part of the people to plant all kinds of truck-garden produce, either for their own consumption or for sale in the public market.

Commerce: The principal trade of this municipality is in rice, and this year promises to be greater than any previous year, judging from the large crops that have been grown in this region and in the adjoining country.

Three Chinese and some four natives are engaged in the purchase and sale of these products, with money borrowed from or advanced by persons of other provinces and of Manila.

The amount of rice exported to Manila during this year is estimated at eighty thousand cavans.

Industry: The industries of this region are not so far advanced as those of other towns. There are only a few small industries, such as pottery-making, the manufacture of hats used by the common laborers, the manufacture of agricultural implements, such as plows, et cetera; also, the manufacture of cloth, like that now manufactured in the Ilocano provinces, and the manufacture of the wine called Basy.

Forestry: There exists in the woods of this municipality a certain amount of timber adapted to the construction of houses, but it is of a very inferior quality.

Minerals: Up to date, no minerals of any kind have been discovered in this region.

Cattle: There exist now two thousand carabao, used for
57 agricultural purposes, and a few dozens of cattle, and as many horses, but most of the residents of the municipality raise pigs and chickens. There are also a few hundred of goats and some sheep.

Public Order: Although no disorder that would be worthy of mention has occurred during this year, I desire to call attention to the fact that the inhabitants of this municipality have observed a very good conduct and that they are law-abiding people and comply strictly with the ordinances promulgated by the honorable

municipal council, especially those relating to good discipline and behavior of the police charged with the preservation of public order within the town proper as well as in the barrios. The system of patrols organized by the police has insured complete tranquillity within the jurisdiction of this municipality. Although this year has passed without any untoward event affecting the public order, I cannot fail to say something here about the critical condition of the lieutenants of the barrios, who lack the necessary personnel to assist them in the discharge of their duties. The municipal code does not authorize this municipality to appoint anyone to assist such lieutenants, who have to attend to everything personally, on account of the lack of personnel as aforesaid, thus acting both as master and servant. This is especially true in cases of emergency. I would recommend that the muncipal code be amended so as to provide for this deficiency.

Untoward events: Two fires have taken place, two Chinese having died as a result thereof. The first one took place on the 11th of May of this year, at six o'clock P. M., a Chinaman by the name of Tan Juaco, a resident of this town, having been burned to death. This fire coincided with some shots that were fired from the outside of the town, apparently by a band of brigands that passed through this municipality. The second fire took place on the 15th of December, at four o'clock in the afternoon, another Chinaman, by the name of José Gomayco, also being burned to death.

58

There were one hundred and six judgments entered by the justice of the peace and seventy by the municipal president.

There is a municipal building of strong materials, and a school-building of light materials; also six school-buildings, of light materials, in the barrios of Calibungan, Mañgologo, Balayang, Palac-Palac, Bantog, Baculong, all of which school-houses have been built by the residents of the respective barrios.

Children who have attended school: Six hundred and sixty-six.

Children who now attend school: Five hundred and ninety-three.

Revenues of the municipality for the year nineteen hundred and six, including the balance from the previous year nineteen hundred and five, P13,622.59. Disbursements during the year nineteen hundred and six, P11,535.69. Balance, P2,086.90.

For the development of commerce and industry in this municipality it would be wise to dredge and improve the river, which has its source in Lake Canarum of this municipality, down to the river Chico of the town of La Paz. This river is navigable in the Rainy Season *by* not in the Dry Season. The advantages that would be derived from such an improvement need not be dilated upon.

Municipality of Victoria, December 31, 1906.

(Signed) GERONIMO GELASIO,
Municipal President.

59 EXHIBIT NO. 2.

I, Cirilo Vergara, Filipino Secular Presbyter of this Archbishopric and Vicar of the northern district of Nueva Ecija, Parish Priest of this town of Victoria, Province of Tarlac, do hereby certify that on page 2 of the Registry of Baptisms of this parish the following entry appears:

On the fifth of January, eighteen hundred and sixty-eight, I, the undersigned parish-priest of this town of Victoria, did solemnly baptize and anoint with the holy oils, at this church under my charge, Silvestre, a child six days old, the legitimate son, in lawful wedlock begotten, of Martin and Juana Rigor, his paternal grandparents being Sinforoso Gayla and Estefania Bernabe, of the barrio of Adriano Gurospe. Pablo Vianio was duly advised of the spiritual relationship and obligations by him contracted.

In witness whereof, I sign these presents.

(Signed) MARIANO BUAN.

The foregoing is a true and correct copy of the original entry to which it refers.

Parish house of Victoria, Tarlac, this 17th day of March, nineteen hundred and eight.

(Signed) CIRILO VERGARA,
Presbyter.

60 On October 17, nineteen hundred and eight, the case was duly filed and docketed in the Supreme Court of the Philippine Islands, and on the third day of December appellant filed his brief, accompanied by the following assignment of errors.

"The court erred in holding that the town of Victoria was formerly the owner of the land in question and subsequently transferred the same to the parish, of the said town, of the Roman Catholic Church.

"The court erred in finding that the occupation and possession of the land in question by the municipality of Victoria dates back over forty years.

"The court erred in finding that in nineteen hundred and one the Municipality of Victoria occupied the said land by its own authority, without the consent of plaintiff."

On the 23rd day of December, nineteen hundred and eight, the appellee filed his brief, a translation of which, at his express request, is included herein, as follows:

(Title of Court and Cause.)

Counsel for appellant at the beginning of his brief says:

"In this action plaintiff prayed the court below to enter judgment declaring that the land known as the public plaza of the town of Victoria belongs to the parish of the said town of Victoria."

The foregoing statement is not correct, as may be seen by reference to Paragraph 4 of the complaint, wherein the land in controversy is designated as the plaza of the Church of Victoria.

Appellant quotes in his brief Law 15, title 5, Partida 5, of the Spanish Codes, Vol. III, page 597, which contains a
61 prohibition against the alienation of public squares, et cetera. Appellant also relies on Section 334 of the Civil Code, as confirming the said prohibition against the alienation of public squares, et cetera. We do not find such prohibition in the Article cited by counsel. The question at issue here is a question of law, and in our opinion the judgment of the trial court is fully supported by the evidence. The reasoning contained in the decision of the court below is conclusive.

The defendant municipality does not claim any right to the buildings; it seems also that it does not claim any right to the piece of land upon which the said buildings immediately stand, but with the exception of the two parcels thus occupied by the buildings the whole tract of land bounded by the four streets is, according to counsel's contention, the property of the municipality of Victoria.

This claim is entirely untenable, because of the absurd result that would follow. If all the land, with the exception of the parcels immediately occupied by the buildings, belongs to the municipality, then the parish would not have any access to or egress from the church and convent.

As stated in the judgment of the trial court, the trees on the land and the location of the church and convent clearly indicate that the land and buildings constitute one whole piece of property.

It cannot be said that it has been fully proven that the land in question was formerly the public square of the town of Victoria, nor do we affirm that the land has not been the public square of Victoria. But, whether or not it has been the public plaza of Victoria, it is certain that during the last forty years it has been the land of the parish of Victoria, occupied and used by it.

62 The Supreme Court, in the case of Barlin vs. Ramirez, said:

"Whether this ecclesiastical property originally belonged to the State, or to any Department thereof, the fact is that, it having been donated, it became the property of the Roman Catholic Church, which has since then been in peaceful possession of the same."

If the land in question was once the public square of the town of Victoria, then it must be presumed that it was donated to the church, notwithstanding the fact that we have been unable to prove such transfer or donation by a written instrument.

In Lawson on Presumptive Evidence many cases are cited in which the tribunals have declared that from a possession of forty years a transfer or donation must be presumed. These presumptions are based on the principle laid down in Paragraph 11 of Section 334 of the Code of Civil Procedure.

Lawson on Presumptive Evidence, page 477 et seq.:

"That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership."

With reference to this presumption, the Supreme Court of Pennsylvania said:

"There is no absolute time prescribed by law on which to found this kind of presumption. Circumstances may require in different cases a different length of time. The circumstances in this case are very strong. The land lies in the midst of a very thickly settled country, where it is extremely valuable. The possession has been too notorious to be unknown to the officers of the late proprietaries. No kind of a possession can be more notorious than the building of a church and using it for public worship, and the occu-
63 pation of an adjoining piece of land for a burial ground. The remainder of the ground being uninclosed is no objection to the possession of the whole. It is the common usage to leave a piece uninclosed, for the free passage of the congregation and the accommodation of horses and carriages. Considering the object, the possession was complete; it was all that the nature of the case required, and the length of time (ninety years) is so great that it is not to be accounted for without supposing a grant, or the promise of a grant, which would establish a right of preemption."

Mather vs. Trinity Church, 8 Am. Dec., 663.

Wherefore, we ask the court to affirm the decree of the court below, with the costs of this instance against the appellant.

(Signed) HARTIGAN & ROHDE,
Counsel for Plaintiff and Appellee.

Thereafter, and on the 13th day of January, nineteen hundred and nine, the case was duly argued before the Supreme Court, there being present the Chief Justice and Justices Torres, Mapa, Johnson, Carson, Willard and Tracey.

On the 11th of March, nineteen hundred and nine, the Supreme Court rendered its decision, which is as follows:

64 (No. 5013. March 11, 1909.)

JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff and Appellee,

vs.

THE MUNICIPALITY OF VICTORIA, Province of Tarlac, Defendant and Appellant.

1. Church Property; Public "Plaza" can not be claimed by the Church. Where the record does not duly show that the Catholic Church or the parish of the town of Victoria is the owner of the large tract of land surrounding the church and the parish house of said town now forming a public plaza, and where the evidence at the trial shows that, prior to the conversion of the barrio then known as Canarum, into the town of Victoria, and before the construction of said church and parish house, such large tract of land was destined as a public plaza wherein public functions and religious seremonies were held, without hindrance or obstacle of any kind, there is no ground nor is there any legal reason for a declaration that said plaza belongs to the church, which plaza, on account of its being a parcel of land of public use, is not susceptible of prescription under articles 334 and 1936 of the Civil Code.

2. Id. Id. Evidence of Public Ownership.—The fact that some fruit trees and plants were set out in said plaza does not constitute an act of private ownership, but rather evidences the public use thereof, or perhaps the intention to improve and embellish the same for the benefit of the town's people.

Appeal from a Judgment of the Court of First Instance of Tarlac.

The facts are stated in the opinion of the Court.

F. Buencamino, for Appellant.
Tartigan & Rohde, for Appellee.

TORRES, *J.*:

On January 17, 1908, the representatives of Mgr. Jeremiah J. Harty, Archbishop of the Roman Catholic Church, as the legal administrator of all the properties and rights of the Catholic Church within the Archbishopric of Manila, filed a written com-
65 plaint in the Court of First Instance of Tarlac against the Municipality of Victoria, alleging that the parish of the said town had been and was then the owner of a parcel of land within the said municipality, known as the plaza of the church of Victoria; that it had acquired said parcel of land more than sixty years previously and had continued to possess the same ever since up to 1901, in which year the defendant municiaplity unlawfully and forcibly seized the said property, claiming to be entitled thereto and retain-

ing it to the present day. For the purposes of the complaint, a description of the metes and bounds of the land in question was set forth in the writing, and plaintiff prayed that, in view of what was therein set forth, judgment be entered holding that the said land was the property of the parish of Victoria, of the Roman Catholic Apostolic Church and that the defendant be ordered to vacate the same and to pay the costs of the action.

The defendant municipality answers the complaint through its attorney and offered a general denial of all the facts stated therein, especially of those numbered 4, 5, 6, and 7; in special defense it alleged that the plaza described in No. 4 of the complaint was founded when the sitio denominated Canarum, a barrio of the town of Tarlac was converted into a civil town in 1855; that the parish of Tarlac was established many years after the civil town, and that therefore it neither had then, nor has now any title to the plaza claimed, and that the complaint injured the defendant, and for this reason it prayed that judgment be entered absolving the
66 defendant of the complaint with costs and damages against the plaintiff.

Evidence was adduced by both parties, and the documents exhibited, to one of which the plaintiff objected, were made of record; the trial court rendered judgment on the 15th of June 1908, holding that the parish of Victoria of the Roman Catholic Apostolic Church, had a better right to the possession of the land described in the complaint, and sentenced the defendant to vacate the same and to pay the costs. To said judgment the representative of the defendant excepted and moved for a new trial on the ground that it was contrary to the weight of the evidence, and he notified the court that, if his motion were overruled, he would appeal to the Supreme Court. The motion for a new trial was overruled; the defendant excepted and presented the corresponding bill of exceptions which, after receipt of a copy had been acknowledged by the adverse party, was approved. On the first of September last, the appellant was ordered to furnish bond in the sum of P1000.00 to insure the fulfillment of the judgment in the event that it should be totally or partially affirmed. To said order the defendant excepted, but furnished the bond as directed by the Court.

In view of the nature of the action brought by the plaintiff against the municipality of Victoria, Province of Tarlac, the question that has arisen between the contending parties consists only in determining who is the owner and proprietor of the parcel of land that surrounds the parish church of the said town and which is called the public plaza of the same.
67 Art. 339 of the Civil Code reads:

Property of public ownership is:

1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads and that of similar character.

Art. 344 of said code also reads:

Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and pub-

lic waters, the promenades, and public works of general service supported by the said towns or provinces.

From the evidence presented by both parties it appears that the town of Victoria, which was formerly only a barrio of the town of Tarlac and known as Canarum, was converted into a town in 1855, and named Victoria; to this end they must have laid out the streets and the plaza of the town, in the center of which was situated the church and parish house from the commencement, and at the expiration of about twelve years the parish of said town was constituted and the priest who was to perform the office of curate was appointed; that from the very begin-ing the large tract of land that surrounds the church and the parish house was known as a public plaza, destined to the use of all the residents of the recently founded town; public performances and religious processions were held thereon without hindrance either on the part of the local authorities or of the curate of said town.

It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future
town which was subsequently called Victoria, should have
68 streets and a public plaza with its church and parish house,
and also a tribunal or building destined for the use of the municipality and the local official at that time called the gobernadorcillo and later on capitan municipal, as has occurred in the foundation of all the towns in these islands, under the old administrative laws.

It may be true that the father of the witness Casimiro Tañedo, who owned the space of land where the church and parish house were erected, had voluntarily donated it to the Catholic Church, the only one known at the time, but proper proof is lacking that the donation affirmed by the said Tañedo comprehended the whole of the large tract which at the present time constitutes the plaza of the town.

It is a custom observed by all the towns established administratively in these Islands under the old Laws of the Indies, that on their creation, a certain amount of land was always reserved for plazas, commons, and special and communal property, and as it is unquestionable that the said large space of land was left vacant in the center of *of* the town of Victoria when it was constituted as a civil town, more than twelve years prior to the appointment of a permanent curate therein, there are good grounds to suppose that the late Vicente Tañedo donated the land now occupied by the church and parish house in said municipality for religious purposes, or to the church, but not to the parish curate, because at the time there was no curate at the new town of Victoria.

Even though all the remaining space of land which now forms the great plaza of the town of Victoria had been owned by the said
Tañedo, it must be presumed that he waived his rights
69 thereto for the benefit of the townspeople, since from the
creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have en-

joyed the free use of said plaza; it has not been satisfactorily shown that the municipality or the principales of the town of Victoria had donated the whole of said land to the curate of Victoria or to the Catholic Church as alleged, nor could it have been so donated, it being a public plaza destined to public use and was not of private ownership or patrimony of the town of Victoria, or of the Province of Tarlac.

It should be noted that, among other things, plazas destined to the public use are not subject to prescription. (Art. 1936, Civil Code).

That both the curates and the Gobernadorcillos of the said town procured fruit trees and plants to be set out in the plaza, does not constitute an act of private ownership, but evidences the public use thereof or perhaps the intention to improve and embellish the said plaza for the benefit of the townspeople.

Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, in as much as it has been fully proven that said plaza has been used without let or hindrance by the pub-
70 lic and the residents of the town of Victoria ever since its creation. For the above reasons it is our opinion that the judgment appealed from should be reversed, and that it should be held, as we do hereby hold, that the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of the said town of public use, and that in consequence thereof the defendant is absolved of the complaint without any special ruling as to the costs of both instances.

Arellano, C. J., Mapa, Johnson, Carson, and Willard, JJ., concur.

Judgment reversed.

71 On April 2, 1909, final judgment was entered as follows:

This Court having regularly acquired jurisdiction for the trial of the above-entitled cause, which was submitted by both parties for decision, after consideration thereof by the Court upon the record and proceedings, its decision and order for judgment having been filed on the 11th day of March, nineteen hundred and nine;

By virtue of the said order the judgment of the Court of First Instance of Tarlac, dated June 19th, nineteen hundred and eight, from which the said appeal was taken, is hereby reversed, and it is declared that all that tract of land not occupied by the church of the town of Victoria and its parish house constitutes the public square or plaza of the said town, devoted to public use, and the defendant is hereby acquitted of the complaint filed by the representatives of the Roman Catholic Church, without special award as to the costs of both instances.

It is further ordered that — recover from — the amount of — as costs.

(Signed) J. E. BLANCO,
[SEAL OF COURT.] *Clerk of the Supreme Court of the Philippine Islands.*

72 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error and Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error and Appellee.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Jeremiah J. Harty, being first duly sworn on oath deposes and says, that he is the Roman Catholic Archbishop of Manila, the appellant and plaintiff in error in the above entitled cause; that the parish church and parish house mentioned in the decision of the Supreme Court of the Philippine Islands in the above entitled cause are of the value of twenty-five thousand dollars gold coin of the United States; that the said edifices are rendered valueless by the said decision of the Supreme Court of the Philippine Islands to the plaintiff and the Roman Catholic Apostolic Parish at Victoria, because by said decision the said edifices are deprived of free egress and ingress and are left without any adjacent land. Deponent further says that the parcel of land described in the complaint is of the value of twenty-five thousand dollars, gold coin of the United States. Deponent further says that the value of the real estate the pos-
73 session of which is in controversy, exceeds the sum of twenty-five thousand dollars, gold coin of the United States.

(S'g'd) JEREMIAH J. HARTY.

Subscribed and sworn to before me this 12th day of April, 1909. Cédula F-106, dated Manila, Jan. 2, 1909.

(S'g'd) J. McMICKING,
[SEAL.] *Clerk of the Court of First Instance of Manila, ex-officio Notary Public.*

74 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff,
versus
THE MUNICIPALITY OF VICTORIA, Defendant.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Thomas L. Hartigan, being first duly sworn on oath deposes and says that he is acquainted with the property described in the com-

plaint of the above entitled action, and with the church and parish house situated thereon.

Deponent further says that the parcel of land described in the complaint is of the value of thirty thousand dollars, gold coin of the United States, and that the church and parish house situated on the said land are of the value of twenty-five thousand dollars, gold coin of the United States; and that the value in controversy in the above entitled action exceeds the sum of twenty-five thousand dollars.

(S'g'd) THOMAS L. HARTIGAN.

Subscribed and sworn to before me this 3rd day of May, 1909. Cédula number F-107, dated Jan. 2, 1909.

(S'g'd) S. FERGUSON,
[SEAL.] *Notary Public.*

My Commission expires December 31, 1910.

75 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Plaintiff,
versus
THE MUNICIPALITY OF VICTORIA, Defendant.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

William J. Rohde, being first duly sworn on oath deposes and says that he is acquainted with the property described in the complaint of the above entitled action, and with the church and parish house situated thereon.

Deponent further says that the parcel of land described in the complaint is of the value of thirty thousand dollars, gold coin of the United States, and that the church and parish house situated on the said land are of the value of twenty-five thousand dollars, gold coin of the United States; and further that the value in controversy in the above entitled action exceeds the sum of twenty-five thousand dollars.

(S'g'd) WM. J. ROHDE.

Subscribed and sworn to before me this 3rd day of May, 1909. Cédula number F-107 dated Jan. 2, 1909.

(S'g'd) S. FERGUSON,
[SEAL.] *Notary Public.*

My commission expires December 31, 1910.

76 R. G. Num. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

The above named plaintiff, conceiving himself aggrieved by the judgment made and entered on the 2nd day of April, nineteen hundred and nine, in the above entitled cause, does hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

(S'g'd) HARTIGAN & ROHDE,
Attorneys for Appellant.

77 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

The plaintiff prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for errors:

I.

The Court erred in reversing the judgment of the Court of First Instance.

II.

The Court erred in absolving the defendant of the complaint of plaintiff.

III.

The Court erred in holding that all the land in question not occupied by the parish church and parish house of Victoria is public plaza of the town of Victoria.

(S'g'd) HARTIGAN & ROHDE,
Attorneys for Appellant.

78 R. G. Num. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

And now comes Jeremiah J. Harty, plaintiff herein, and says:

That on or about the 2nd day of April, 1909, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against this plaintiff, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may be issued in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated, may be sent to the Supreme Court of the United States.

(S'g'd) HARTIGAN & ROHDE.
Attorneys for Plaintiff in Error.

79 R. G. Num. 5013.

UNITED STATES OF AMERICA.
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error

The plaintiff in this case, in connection with his petition for a writ of error, makes the following assignment of errors which he avers exist:

I.

The Court erred in reversing the judgment of the Court of First Instance.

II.

The Court erred in absolving the defendant of the complaint of plaintiff.

III.

The Court erred in holding that all the land in question not occupied by the Parish Church and Parish House of Victoria is public plaza of the town of Victoria.

(S'g'd) HARTIGAN & ROHDE.
Attorneys for Plaintiff in Error.

80 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

Order.

Upon consideration of plaintiff's petitions for an appeal and writ of error, respectively, in the above entitled cause, to the Supreme Court of the United States, from the final decree of this Court, it is hereby ordered that the parties be cited to appear before the undersigned on Thursday, the 22nd instant, 9 o'clock A. M., and the defendant Municipality of Victoria is hereby directed to there and then show cause why the said prayer of appeal and writ of error should not be allowed.

Manila, P. I., April 13, 1909.

(S'g'd) A. C. CARSON,
Associate Justice Supreme Court, P. I.,
Acting in Vacation.

Service acknowledged this thirteenth day of April, 1909.

(S'g'd) HARTIGAN & ROHDE.
FELIPE BUENCAMINO,
(S'g'd) By EUGENIO ARNEDO.

81 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

Order.

It is hereby ordered that the hearing upon the question of the allowance of the writ of error and appeal in the above entitled cause be continued to the third day of May, 1909, at nine o'clock A. M., and that notice hereof be at once sent to the parties.

Manila, P. I., April 22, 1909.

(S'g'd) A. C. CARSON,
Associate Justice Supreme Court, P. I.,
Acting in Vacation.

Service acknowledged this 22nd day of April, 1909.

(S'g'd) HARTIGAN & ROHDE.
FELIPE BUENCAMINO,
(S'g'd) By EUGENIO ARNEDO.

82 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff,
versus
THE MUNICIPALITY OF VICTORIA, Defendant.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

No affidavits having been filed by or on behalf of the defendant municipality in this action, which was duly cited to appear and did in fact appear by counsel to show cause why a writ of error and an appeal should not be allowed therein, and it appearing from the affidavits of Jeremiah J. Harty, Wm. J. Rohde and Thomas L. Harti-

gan that the "value in controversy" in this action, and that the real estate, title and possession of which is involved and brought in question therein, exceeds Twenty-five Thousand Dollars ($25,000), the undersigned is of opinion that he should hold and he does hereby hold that the "value in controversy" does in fact exceed Twenty-five Thousand Dollars ($25,000), in accordance with the provisions of section 10 of an Act of Congress, dated July 1, 1902, which prescribes that such value is "to be ascertained by the oath of either party or of competent witnesses."

This holding is announced notwithstanding the fact that by admission of counsel for plaintiff, it appears that the value of the
83 parcel of land for which judgment was rendered in favor of the defendant municipality, exclusive of the value of the adjoining parcel of land with the church and convent situated thereon, title to which is recognized to be in the plaintiff, and damages thereto resulting from the aforesaid judgment, does not exceed Twenty-five Thousand Dollars ($25,000.00).

Manila, P. I., June 1, 1909.

(S'g'd) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

84 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

On Petition of counsel for plaintiff and appellant, an appeal to the Supreme Court of the United States of America, from the final decree and judgment heretofore filed, and herein entered, is allowed upon the filing of a bond with good and sufficient surety in the sum of One Thousand Dollars, United States Currency ($1000.00), for costs on appeal, it appearing from the affidavits filed in the record that the value of the subject matter in controversy is more than Twenty-five Thousand Dollars, United States Currency ($25,000).

Let a certified copy of the record, testimony, stipulations, and all proceedings herein, be transmitted forthwith to said Supreme Court of the United States of America.

Manila, P. I., June 1, 1909.

(S'g'd) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands. Assigned to Duty in Vacation.

85 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

THE UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Municipality of Victoria, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the Clerk's office of the said Court on the 29th day of September, 1909, in a cause wherein Mgr. Jeremiah J. Harty is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 1st day of June, 1909.

(S'g'd) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

Received copy, this 1st day of June, 1909.

(S'g'd) FELIPE BUENCAMINO.

86 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you, between Mgr. Jeremiah J. Harty, plaintiff and the Municipality of Victoria, defendant, wherein it appears from the affidavits hereto attached that the subject matter in controversy exceeds in value the sum of Twenty-five Thousand Dollars, United States Currency ($25,000), a manifest error has happened, to the great damage of the said Mgr. Jeremiah J. Harty, as by his complaint appears. We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this
87 writ, so that you may have the same at the City of Washington on the 29th day of September, 1909, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 24th day of May, in the year of Our Lord one thousand nine hundred and nine and of the Independence of the United States of America the one hundred and thirty-third.

(Sgd.) J. E. BLANCO,
[SEAL.] *Clerk of the Supreme Court of the Philippine Islands.*

The foregoing writ of error is allowed this 24th day of May, 1909, upon the filing by plaintiff and appellant of a bond with good and sufficient surety, in the sum of One Thousand Dollars, United

States Currency ($1000.00), to prosecute the said writ of error to effect and answer all costs if he fails to make good his plea.

Let a certified copy of the record, testimony, stipulations, and all proceedings herein, be transmitted forthwith to said Supreme Court of the United States.

(Sgd.) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

88 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

To the Municipality of Victoria, Greeting:

You are hereby cited admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 29th day of September next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Mgr. Jeremiah J. Harty is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in this behalf.

Given under my hand at the City of Manila in the Philippine Islands, this 1st day of June in the year of Our Lord one thousand nine hundred and nine.

(Signed) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

Received copy, this 1st day of June, 1909.

(Sgd.) FELIPE BUENCAMINO.

89 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

Know all men by these presents: That we, William J. Rhode, as principal, and Thomas L. Hartigan and Roman Lacson as sureties, are held and firmly bound to the Municipality of Victoria in the full sum of One Thousand Dollars to be paid to the said Municipality of Victoria or its assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seal- and dated this 12 day of April, in the year of Our Lord one thousand nine hundred and nine.

Whereas lately in the Supreme Court of the Philippine Islands, in a suit pending in said Court between Mgr. Jeremiah J. Harty plaintiff, and the Municipality of Victoria, defendant, a decree was rendered against the said plaintiff, and the said plaintiff having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit and a citation directed to the said Municipality of Victoria citing and admonishing the same to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 29th day of September, 1909:

90 Now the condition of the above obligation is such that if the said plaintiff shall prosecute his appeal and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Sgd.) WM. J. ROHDE.
(Sgd.) THOMAS L. HARTIGAN.
(Sgd.) ROMAN LACSON.

Approved:

(Sgd.) A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

91 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

Know all men by these presents, That We, William J. Rohde, as principal, and Roman Lacson and Thomas L. Hartigan as sureties, are held and firmly bound unto the Municipality of Victoria in the sum of One thousand Dollars to be paid to the said Municipality of Victoria, its attorneys, or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 12 day of April in the year of Our Lord one thousand nine hundred and nine.

Whereas, lately in the Supreme Court of the Philippine Islands, in a suit pending in said court between Mgr. Jeremiah J. Harty, plaintiff, and the Municipality of Victoria, defendant a judgment was rendered dismissing the suit of the said plaintiff and the said Mgr. Jeremiah J. Harty having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the said suit and a citation directed to the said Municipality of Victoria citing and admonishing the said Municipality to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 29th day of September, next.

92

Now, the condition of the above obligation is such that if the said Mgr. Jeremiah J. Harty shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation be void else to remain in full force and virtue.

(Sgd.) WM. J. ROHDE.
(Sgd.) THOMAS L. HARTIGAN.
(Sgd.) ROMAN LACSON.

Approved by:

A. C. CARSON,
Associate Justice of the Supreme Court.

93 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing ninety-two pages of typewritten matter constitute a true and correct transcript and translation of the record and proceedings in case No. 5013 of said Court, entitled "Mgr. Jeremiah J. Harty, Catholic Archbishop of Manila, plaintiff and appellant versus The Municipality of Victoria, defendant and appellee"; and in obedience to the writ of error and appeal herein I hereby transmit the same to the Supreme Court of the United States of America.

Witness my hand and seal of the Supreme Court of the Philippine Islands, this eighteenth day of June, 1909.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk Supreme Court of the Philippine Islands.

94 R. G. Núm. 5013.

UNITED STATES OF AMERICA.
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

The above named plaintiff, conceiving himself aggrieved by the judgment made and entered on the 2 day of April, nineteen hundred and nine, in the above entitled cause, does hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

HARTIGAN & ROHDE,
Attorneys for Appellant.

95 R. G. No. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

The plaintiff prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for errors:

I.

The Court erred in reversing the judgment of the Court of First Instance.

II.

The Court erred in absolving the defendant of the complaint of plaintiff.

III.

The Court erred in holding that all the land in question not occupied by the parish church and parish house of Victoria is public plaza of the town of Victoria.

HARTIGAN & ROHDE,
Attorneys for Appellant.

96 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

On Petition of counsel for plaintiff and appellant, an appeal to the Supreme Court of the United States of America, from the final decree and judgment heretofore filed, and herein entered, is allowed, upon the filing of a bond with good and sufficient surety in the sum of One Thousand Dollars, United States Currency ($1000.00), for costs on appeal, it appearing from the affidavits filed in the record

that the value of the subject matter in controversy is more than Twenty-five Thousand Dollars, United States Currency ($25,000.00).

Let a certified copy of the record, testimony, stipulations, and all proceedings herein, be transmitted forthwith to said Supreme Court of the United States of America.

Manila, P. I., June 1, 1909.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

97 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila,
Appellant,
versus
THE MUNICIPALITY OF VICTORIA, Appellee.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Municipality of Victoria, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the Clerk's office of the said Court on the 29th day of September, 1909, in a cause wherein Mgr. Jeremiah J. Harty is appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 1st day of June, 1909.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

Received copy this first day of June, 1909.

FELIPE BUENCAMINO.

98 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you, between Mgr. Jeremiah J. Harty, plaintiff, and the Municipality of Victoria, defendant, wherein it appears from the affidavits hereto attached that the subject matter in controversy exceeds in value the sum of Twenty-five Thousand Dollars, United States Currency ($25,000), a manifest error has happened, to the great damage of the said Mgr. Jeremiah J. Harty, as by his complaint appears. We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to
99 the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 29th day of September, 1909, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 24th day of May, in the year of Our Lord one thousand nine hundred and nine and of the Independence of the United States of America the one hundred and thirty-third.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court
of the Philippine Islands.

The foregoing writ of error is allowed this 24th day of May, 1909, upon the filing by plaintiff and appellant of a bond with good and sufficient surety, in the sum of One Thousand Dollars, United States Currency ($1000.00), to prosecute the said writ of error to effect and answer all costs if he fails to make good his plea.

Let a certified copy of the record, testimony, stipulations, and all proceedings herein, be transmitted forthwith to said Supreme Court of the United States.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

100 R. G. Núm. 5013.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

At Law.

Mgr. JEREMIAH J. HARTY, Roman Catholic Archbishop of Manila, Plaintiff in Error,
versus
THE MUNICIPALITY OF VICTORIA, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

To the Municipality of Victoria, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 29th day of September next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Mgr. Jeremiah J. Harty is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the City of Manila in the Philippine Islands, this 1st day of June in the year of Our Lord one thousand nine hundred and nine.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands, Assigned to Duty in Vacation.

Received copy this first day of June 1909.

FELIPE BUENCAMINO.

Endorsed on cover: File No. 21,873. Philippine Islands Supreme Court. Term No. 149. Mgr. Jeremiah J. Harty, appellant and plaintiff in error, vs. The Municipality of Victoria. Filed October 18th, 1909. File No. 21,873.

FILED.
MAR 29 1912
JAMES H. McKEN

Supreme Court of the United States,

OCTOBER TERM, 1911.

No. 149.

MGR. JEREMIAH J. HARTY,
Appellant and Plaintiff-in-Error,

vs.

THE MUNICIPALITY OF VICTORIA.

13.

Brief For Appellant and Plaintiff-in-Error.

FREDERIC R. COUDERT,
HENRY W. VAN DYKE,
Of Counsel for Appellant and Plaintiff-in-Error.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, Appellant and Plaintiff-in-Error, *vs.* THE MUNICIPALITY OF VICTORIA.	No. 149.

BRIEF FOR APPELLANT AND PLAINTIFF-IN-ERROR.

Statement.

This is an appeal and a writ of error from a judgment of the Supreme Court of the Philippine Islands rendered on April 2d, 1909. The subject matter of the suit is a parcel of land known as the *plaza* (square) of the church of Victoria, situated in the Municipality of Victoria, Province of Tarlac, Philippine Islands.

The appellant is the duly appointed Roman Catholic Archbishop of the City of Manila, representing as such the property rights and interests of the Roman Catholic Church in the Philippine Islands and constituting a "unipersonal

corporation under the laws of the Philippine Islands." (Rec., fol. 1.)

The action was brought by the said Archbishop Monseigneur Jeremiah J. Harty against the Municipality of Victoria for the restoration of this property, and the suit was tried in the Court of First Instance of the Province of Tarlac. That court made findings of fact and law in favor of the Roman Catholic Church, and the Municipality therefrom appealed to the Supreme Court of the Philippine Islands, which reversed said decision. The property in controversy being of a value greater than $25,000, the plaintiff brings his appeal and writ of error to this court. (Rec., fol. 73.)

Facts.

In considering the facts of this case we would respectfully call the attention of the court to the opinion in the case of Ponce v. Roman Catholic Church (210 U. S., 296), in which the origin of ecclesiastical properties in the Spanish possessions is discussed with great erudition and the law governing them and their peculiar legal situation is exhaustively established. It is necessary to bear this situation in mind in considering the proof upon which the Court of First Instance held in favor of the claim of ownership made by the Church to the so-called Plaza.

The close relations existing between Church and State prior to the cession, the fact that the Catholic Church was the sole Church in the Philippine Islands and was engaged in performing various functions which in the United States would be regarded as governmental or public,

easily explain why it is not infrequently difficult to establish the existing property relations between the Church and the State as to certain lands or buildings.

The large ecclesiastical properties in the Philippines were owned and possessed altogether without title deeds, and even under modern Spanish registration laws church edifices were not subject to registration.

The complaint in this action is very short. It sets forth that the plaintiff is the legal administrator of all the property of the Catholic Church within the Archdiocese of Manila, that the Parish of Victoria, of the Roman Catholic Church, is and has been the owner of the parcel of land in question, the bounds of which are set forth; that such Parish was in possession of the land for more than sixty years prior to 1901, when the defendant Municipality forcibly took possession thereof, and now claims title thereto.

The answer contains a general denial and further sets up as an affirmative defense that the Plaza described was laid out at the time the Municipality was incorporated as a town and avers that as the Parish of Tarlac was established several years after the incorporation of the town it has no right to the Plaza now claimed by the plaintiff (Rec. fols. 3-4).

Some distinction was seemingly drawn between the Parish of Tarlac as a juristic entity and the Roman Catholic Church. It may be noted, however, that this distinction does not seem to have been insisted upon by the appellee and we submit that if it be shown that the property was duly handed over to ecclesiastical authorities for use by the Church, it is a matter of no legal import

whether technically the title be in any specific Parish or in some one of the authorities representing the Church generally. The property once dedicated to church use became irrevocably the property of the Church as a corporate body. As this Court said in the Ponce case (*supra*):

> "The historic continuity of the juristic conception, exemplified by the civil law, is maintained by the Partidas, the fundamental code of ancient Spanish law, whose provisions show that whoever built a church was required to provide it with an adequate perpetual endowment *as well as a site*, and refute any idea of a retention of ownership by the donor of the land or the contributors to the building." (210 U. S. 312).

A number of witnesses were examined on both sides and the history of the property recited according to the recollection of the older residents. No documentary evidence was introduced on either side save an immaterial annual report of the town throwing no light upon the question at issue.

The Trial Court made the following findings, which, we earnestly submit, were "justified by the evidence" and therefore under the laws prevailing in the Philippine Islands should not have been set aside by the Supreme Court. These findings are as follows:

> "(1) That the former owner of the land in question ceded the same to the town of Victoria, which in turn transferred it to the Parish of said town and, consequently, to the Roman Catholic Apostolic Church;
>
> (2) That the possession of the land in question by the Parish Church of Victoria dates back more than forty years. The Par-

ish priests of the said town of Victoria were the persons who actually occupied the land, cultivating the same, grazing and pasturing their horses, and planting trees thereon;

(3) That in 1901 the Municipality of Victoria occupied the said land by its own authority, without the consent of the plaintiff.

* * * * * * * *

It is, therefore, ordered that judgment be entered declaring that the Parish Church of Victoria, of the Roman Catholic Church, has a superior right to the possession of the land described in the complaint and directing that defendant vacate the land and pay the costs of this action." (Rec., fols. 5-6.)

The Supreme Court not only reversed this judgment but held that the municipality had absolute title to the land in controversy and so decreed.

While the testimony adduced by the plaintiff and the defendant appears to contain some contradictions, there is little real difference in the essential allegations of the witnesses, taken as a whole. The decision by this court does not necessitate a nice weighing of the credibility of the statements of the various witnesses but involves rather the correctness of the inferences drawn, by the Supreme Court of the Philippines, from the whole testimony. This is scarcely, therefore, a case like that of De la Rama *v.* De la Rama, 201 U. S., 303, in which the courts below differed as to the facts, and this court felt called upon to itself pass upon those facts; nevertheless, in either view, the jurisdiction of this court to determine the merits of the controversy is clear.

A reading of the whole record should indeed serve to persuade that the Court of First Instance was correct in its disposition of the controversy. It appears, in the light of the history of the Philippine Islands, that the right to this property was first questioned by the revolutionists, who were opposed to the ownership by the Church of any property and that the witnesses testifying against the Church belonged to the Sect established by one Aglipai, whose bitter animosity toward the ancient and established Church is so generally known as to need no comment.

The jurisdiction of the Supreme Court of the Philippine Islands is governed by Section 497 of the Philippine Code, which reads as follows:

> "In hearings upon bills of exception in civil actions, * * * the Supreme Court shall not review the evidence taken in the Court below, nor re-try the questions of fact except as in this section hereinafter provided, but shall determine only questions of law raised by the bill of exceptions. *But the Supreme Court may review the evidence taken in the court below, and, after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there rendered, as justice may require, in the following cases*: * * *
>
> "2. If the excepting party filed a motion in the Court of First Instance for a new trial *upon the ground that the evidence was insufficient to justify the decision*, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render

such final judgment, as justice and equity may require."

The jurisdiction of the local Supreme Court is consequently based upon the existence of "a preponderance of evidence" against the findings in first instance which evidence must be insufficient to justify the decision in order that such decision may be disturbed on appeal. It is not sufficient that the Supreme Court should have thought the evidence susceptible of an interpretation different from that put upon it by the trial court.

The appellant is not thus under the necessity of here demonstrating anything save that the evidence adduced below was sufficient to support the decision, and hence the Philippine Supreme Court should not have reversed the judgment.

The first and principal witness for the appellant was Casimiro Tanedo Miguel. Miguel is 67 years of age. He has always known the property in question because the land "where the church now stands was formerly a carabao corral" which "belonged to my deceased father." His father was the first founder of the town of Victoria "and ceded the land to the church," the church edifices and convent standing almost in the centre of the land. The Parish priest of Victoria continued in the quiet and uninterrupted possession of the Plaza up to the Revolution of 1896. Miguel's father apparently did not directly donate the land to the Church, but turned it over to the principal citizens who in turn gave it to the parish priest, when they had built a church upon this land. The witness was present at the formalities (Rec., fol. 18), at which the land was so turned over.

He somewhat pithily states the procedure usual in these matters, as follows:

> "I have always noticed that the principal citizens of the town, before making a requisition for a priest, would build the church and convent, and then the church authorities, if they deemed it convenient, would send a priest; and as the Commissioners of Victoria said that the people could support one they sent a priest and the principal citizens of the town turned everything over to him." (Rec. Fol. 18.)

The principal citizens of the town, at the time the property was turned over to the priest, were Captain Mariano Rigor and one Regino Rigor, Captain.

As the Municipality in nowise disputes the title to the Church edifices or the land upon which they are built, it is quite evident that the statement of this witness as to the turning over of these properties by his father and the leading citizens of the town is altogether accurate.

The sole question between the witnesses for the plaintiff and those for the defendant, therefore, resolves itself into one of metes and bounds. Is the above space about the church buildings, here denominated the Plaza, also the property of the Church, or are the property rights of the Church limited to the land enclosed within the four walls of the two edifices? Is the Supreme Court justified in presuming that Tanedo made two grants, one to the Chuch, the other to the town. The claim of the Church is that the property was a unity, the ownership both of the land upon which the buildings stand and the surrounding lands resting on the same title and having the same source.

The testimony of the succeeding witnesses throws light upon this, showing as it does that the whole Plaza property was cultivated by the priests, who gathered the harvests, a fact which if it does not conclusively prove ownership at least effectually negatives the somewhat fanciful theory that Tanedo intended to donate it to the town.

The land about the church was evidently thus designed not only to form a necessary appendage to the church edifices but to also supply a means for the support of the clergy of the parish.

MARIANO RIGOR, fifty-three years of age, was a resident of Victoria. He testified that the priests had planted the trees in the church plaza and that some of the priests had fenced the church plaza in to protect the crops and the places where the horses were kept. At the time of the revolution the priests left Victoria.

Rigor who was Captain or Cabeza de Berangay (Head Tribesman) knows that public celebrations were held there under the control of the priests. He also knows that at one time a certain Governor went there and ordered the fence, "*made by the priests*," to be torn down. What followed throws light upon the general situation and would go far to justify the attitude of the Court of First Instance which had the opportunity of seeing the witnesses and to judge of their credibility:

> "They were going to build a market at that place; the priests objected to it and closed the gate; the governor then went there and ordered the fence removed, and the priest had the fence repaired again, and it was not very long afterward before an order was received by the Captain, and we were directed to go to

Tarlac and report to the Prosecuting Attorney. *The Prosecuting Attorney asked us who was the owner of the plaza, and we told him that it belonged to the church; and after we told him that the plaza belonged to the church the idea of establishing a market there was abandoned"* (Rec., fol. 29).

Regino Rigor, sixty-four years of age, was also a Cabeza de Berangay some forty years before. He also testified that when the first priest arrived there (Victoria) the principal citizens of the town turned the plaza over to him, also the church and convent, and after the land was delivered to the priest, he (the priest), ordered the same sown in rice, wheat, papaya and other fruits (Rec., fol. 35).

The present parish priest of Victoria, Cirilo Vegara, testified that when he arrived in Victoria during the revolution, the revolutionary government was in possession of the church plaza and at the time he did not take possession but that later on, after the revolutionists ran away and vacated the church property, he took possession of it, at the end of 1899 or 1900 (Rec., fol. 24).

The parish priest of the neighboring town of Tarlac testified that he had known the town of Victoria, the church and convent since he had become the parish priest at Tarlac, some eighteen years ago, and that he had occasionally officiated in Victoria as priest. He knew that the priests had been in possession of the church plaza, to the exclusion of all other claims of ownership, up to the time of the Revolution.

No other witnesses were introduced for the plaintiff.

On behalf of the defendant there testified one Ferman Tolentino, sixty-eight years of age. He

states that the barrio (subdivision) of Tarlac was converted into a town some fifty years before and that when the place was converted into a town no plaza existed upon the land in controversy; that the plaza was laid out when the first Captain was appointed, *at which time, while there was a church there,* no parish had as yet been organized. The church and the convent had been built "by us, and then we petitioned for a priest to come to the convent." He testified that the plaza belonged to the town, and bases this opinion on the fact that he was appointed by the Captain of the town to watch the men who were planting the trees, which were planted by the order of the Captain; that the people of the town "used that plaza for all celebrations by the town, such as dramatic plays, fireworks, etc."

His testimony as to the crops sown on the plaza strongly bears out the Church's position because although he says the people of the town sowed the rice in the plaza and that the rice was grown there with the knowledge and consent of the captain of the town, yet, when asked: "Q. And who gathered the crop?" he answers: "The acolytes."

Martin Caita testified that "the town was established first and then we built the church" (Rec., fol. 45). The plaza was not turned over to the church. The people of the town always used that plaza for public festivities. He was asked:

> "Q. Do you know whether that priest ever claimed any right to the possession of that plaza?
>
> A. I was told that he surveyed the plaza.
>
> Q. Do you know whether that priest ever claimed any title to the place—please answer my question?

A. We would not have permitted it." (Rec., fol. 46.)

The witness has not been in that church "*since the Filipino Church" was built.*

MARIANO RICOR infers that the plaza has always belonged to the town because the town always used it for public celebrations, such as dramatic plays, greased poles, and other forms of recreation. He also belongs to the Filipino Independent Church. Even this fact, however, has not completely obscured his recollection, since he testifies:

"Q. Do you remember when the plaza was sown in rice, corn and wheat?

A. Yes, sir, I remember.

Q. *Who reaped the harvest of wheat, rice and corn?*

A. *Father Mariano.*" (Rec., fol. 48.)

PEDRO MARIANO is the Municipal President of Victoria and retained the attorneys defending this suit. The Municipal Council met in 1901 ("long before my time") for the purpose of considering the question as to whether the plaza here in dispute is a public square or is private property. When the witness took charge of the presidency of the town he found annual reports of his predecessors which show the Municipality to have been in possession of the plaza since 1855. The particular document to which he refers is that of 1894, but this document he was unable to bring with him, important as it would seem to be if he accurately reported its contents.

The nature of defendant's testimony generally is well instanced by that of this witness, the President of the town, who should have had every

means for obtaining definite information in regard to the disputed question and whose zeal in the defendant's cause was not doubtful. His testimony concludes as follows:

> "Q. Did the municipality use the whole of the plaza bounded by the four streets, sir?
> A. *The municipality did not use it, but owned it.*
> Q. The whole plaza?
> A. Yes, sir.
> Q. Also the church?
> A. *Not the church.*
> Q. But the whole plaza, up to the wall of the church?
> A. The site where the church stands is separated from the land owned by the municipality.
> Q. Where does the property of the church begin and where does the land of the municipality end?
> A. The land where the church stands belongs to the church.
> Q. And all the land which is not occupied by the church and convent belongs to the municipality, is that it?
> A. Yes, sir." (Rec., fols. 51-52.)

The testimony of this witness is significant in showing that the question of ownership was first raised in 1901. It is earnestly submitted that a careful scrutiny of the testimony of the defendant's witnesses will show that it contains no statements of actual facts controverting the findings of the trial court. Vague statements of ownership are, when analyzed, seen to rest upon no objective fact save that the people used the plaza for their celebrations. It is, of course, matter of general knowledge that practically all the feasts and celebrations in the Philip-

pine Islands were church festivals, held under the auspices of and with the concurrence of church authorities and hallowed by centuries of religious custom. There can be little doubt that the church allowed its plaza to be used for all these public functions, but surely no inference of title in the municipality can be drawn from this fact.

The real situation undoubtedly is, that a large plot of land used by Miguel, father of the witness, as a carabao pasture land, was turned over to the town in about the year 1855 for the purpose of church buildings and church purposes. The people of the town erected thereon a church and a convent; the people and the priests planted trees and laid out a church square; that church square in whole or in part was used for cultivation of rice and other crops by the priests, who gathered in these crops through the acolytes, and some, or at times all, of the plaza was used for church processions and local festivals generally. The Supreme Court totally ignores the settled custom of donors of church property presenting adjacent land sufficient for burial ground, garden, stable, etc.

No question of ownership would have arisen had it not been for the Revolution and certain changes in political, social and religious conditions, no uncommon manifestation of revolutionary spirit since 1789, consisting in attacks upon the Church organization and efforts to confiscate its properties. It is clear enough that the witnesses for the defendant were actuated by a certain animus, easily explicable on the ground that they have joined the so-called Filipino Church, which, as the history of these litigations indicates, has been endeavoring to acquire properties be-

longing to the Roman Catholic Church. Perhaps the uniform lack of success with which these efforts have so far been attended have led to an attack of this kind in the name of a municipality for the possession of property naturally and necessarily pertinent to these church edifices, originally destined to general church use and which the priests had evidently always used for the benefit of the people of their parish.

POINT I.

The findings of the Court of First Instance fully justified the judgment in favor of the Church.

The judgment of the Supreme Court of the Philippine Islands reversing the trial court is contrary to the weight of evidence, incompatible with the historic situation, and based on a mere inference grounded on an erroneous assumption.

Upon the testimony as above outlined, the Supreme Court of the Philippine Islands not only reversed the judgment of the Court of First Instance but entered a judgment declaring that

> "all that tract of land *not occupied by the church of the town of Victoria and its parish house* constitutes the public squares or plaza of the said town, devoted to public use, and the defendant is hereby acquitted of the complaint filed by the representatives of the Roman Catholic Church, without special award as to the costs of both instances." (Rec., fol. 71.)

The Supreme Court of the Philippine Islands did not, therefore, content itself with merely holding that the plaintiff had failed to make title, but, notwithstanding the superlatively diaphanous testimony of defendant's witnesses, went to the extent of holding that the title to the plaza was in the town. In other words, the Supreme Court holds that not only plaintiff's testimony is too weak to sustain its case, but, that the preponderating weight of the testimony of Messrs. Tolentino & Co. was sufficient to establish title in the defendant.

It is fair, however, to say that the Court does not predicate this result entirely upon the evidence of these witnesses. The judgment of the Court is largely based upon the existence of an alleged custom that

> "a certain amount of land was, upon the laying out of towns, always reserved for plazas, commons, and special and communal property, and as it is unquestionable that this said large space of land was left vacant in the center of the town of Victoria when it was constituted as a civil town, more than twelve years prior to the appointment of a permanent curate therein, there are good grounds to suppose that the late *Vincente Tanedo donated the land now occupied by the church and parish house in said municipality for religious purposes, or to the church, but not to the parish curate, because at the time there was no curate at the new town of Victoria.*" (Rec., fol. 68.)

We are unable to see the relevancy of this latter statement, since it is quite immaterial whether Tanedo's gift was to the church or the parish curate. His purpose was that the

property should be used for religious purposes by the only church of which he knew anything. It is very safe to assume his complete indifference as to what particular administrative subdivision of that great organization should have attributed to it the management of the property so donated.

There is nothing in the record to show that the people of the town did not establish another and really public plaza, as the court says it was the custom to do; there is nothing, in other words, to show that the land in question was the only plaza that was established, or even that it was in the center of the town, as the court says it was. There is thus a palpable fallacy in the sillogistic process by which the learned court reaches its conclusion. And, with respect to the alleged custom, there is no evidence in the case whatever of its existence. In Section 275 of the Code of Civil Procedure it is provided that the matters that may be judicially noticed shall be—

> "The existence and territorial extent of states and of the several islands forming the Philippine Archipelago, their forms of government and symbols of nationality, the laws of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the United States and of the Philippine Islands, the seals of the several departments of the government of the United States and of the states of the Union, and of the Philippine Islands, public and private, and of official acts of the legislative, judicial and executive departments of the United States and of the Philippine Islands, the laws of nature and the measure of time, the geographical divisions and political history of the world, and all similar matters of public knowledge shall be judicially recog-

> nized by the court without the introduction of proof."

It does not seem to counsel that the custom referred to is one that comes within the scope of this provision; but, if it is, then the court ought also to have taken judicial notice of the corollary to it—that where plazas are established as *public* ones, the church buildings are not located in the middle of the land, but facing them, on a street at the side. That is a general custom. The court ought also to have taken notice of that other custom in all the old Spanish towns of combining religious and public celebrations—of the fact that they were one and inseparable. The testimony as to this only instance of public use that was mentioned by witnesses for the defense, and on which so much stress was laid, would then have lost its significance, except, indeed, to show that the plaza was, even in that respect, used as a church plaza as the donor intended.

The Supreme Court having reached the above cited conclusion, continues:

> "Even though all *the remaining space* of land which now forms the great plaza of the town of Victoria had been owned by the said *Tancdo, it must be presumed that he waived his rights thereto for the benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said plaza;* it has not been satisfactorily shown that the municipality or the principals of the town of Victoria had donated *the whole of said land* to the curate of Victoria or to the Catholic Church, as alleged, nor could it have been so donated, it being a public plaza destined to

> public use, and was not of private ownership or patrimony of the town of Victoria, or of the Province of Tarlac." (Rec., fol. 69.)

Two propositions seem to be contained in this statement:

First. That Tanedo waived his rights to the remaining land for the benefit of the townspeople.

Second. That this surmise as to Tanedo's intent is wholly based upon the use of the land by the townspeople.

As to the first of these propositions, we can only say that it rests on no evidence whatever, but is rather matter of "theory and discourse." Tanedo's son testified that the whole property was turned over to the Church, and the Court admits that some of it was. The testimony of the other witnesses on both sides shows that church edifices were erected on the land in question and that the priests cultivated their crops thereon. The Supreme Court must, therefore, reach its conclusion differentiating between the land actually built upon and the remainder, wholly upon the ground that the people have enjoyed the free use of said plaza for their celebrations. We assume that it must be generally admitted that church plazas, throughout Spanish possessions, were freely enjoyed by the people of the parish, for all of whose benefit the parish and church edifices themselves existed. As well contend that the church structures belonged to the Municipality because all persons were always welcome to their use and their doors were always open. The Supreme Court's position is very much akin in

this respect to that assumed by the municipality of Ponce. The Court's major premise thus rests upon the misinterpretation of admitted facts.

The second proposition is purely gratuitous in that it assumes the whole question in controversy. If the property in litigation were originally donated by Tanedo to the town, laid out as a public plaza and belonged to the municipality in a public capacity there could have been no matter for litigation. There is not the slightest evidence, however, that this entire piece of land, ceded by Tanedo, was ceded for any other purpose than that of the church, that the municipality ever understood it otherwise, or that the distinction attempted to be drawn by the witnesses for the defence and adopted by the Philippine Supreme Court, that the church owned the land covered by the four walls of the edifices and no other has any foundation. That Tanedo divided his land between church and state has no foundation in the testimony and savors of anachronism; it is a good instance of *après coup* reasoning. If "it must be presumed that he, Tanedo, waived his rights thereto for the benefit of the townspeople," such presumption must necessarily be predicated upon grounds existing neither in the record, in logic, nor in history.

If the land in controversy were originally a public plaza, the church was then built upon such public plaza and the church authorities are tenants at sufferance of the Municipality of Victoria. Should the shifting of political majorities result in putting the followers of Aglipai in power, why should they not be in position to make such claim? The logic of the Supreme Court certainly would countenance such a claim. For some reason the

Supreme Court of the Philippine Islands seems to shrink from this seemingly inevitable conclusion, but has offered no reason for the distinction maintained between the two parcels of land unless it be the two suppositious grants gained from the assumedly prescient Tanedo. This may or may not be a piece of wise constructive statesmanship on their part but can find no warrant in legal reasoning which alone can concern us here.

The view of the Court below may not unfairly be thought to rest upon the idea that, upon the divorce of Church and State, those proportions of the church property which were not used directly, solely and continuously for actual religious worship should pass to the State. This is a political theory which has not been sanctioned by our laws nor by this Court.

The juristic personality of the Church, its right to possess and to continue in the possession of all property, acquired either by prescription or originally donated to its use, has been established by the action of the executive governments in these Islands and sanctioned, after exhaustive review of the whole situation, by this court in the case of Ponce *v.* Roman Catholic Church (210 U. S., 296). It is the American legal doctrine and contains nothing novel (Terrett *v.* Taylor, 9 Cranch., 43). This view is not only "juristic" but has saved us from those century old conflicts between Church and State, which have figured so disastrously in European history as a result of the secularization process, conflicts, which our American experience proves, could probably have been avoided.

The gravamen of the decision of the Supreme Court is contained in the last paragraph of the opinion.

> "Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, *inasmuch as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria ever since its creation.*" (rec., fol. 69.)

It is thus clear that this case does not depend upon the nice weighing of conflicting testimony testing the credibility of the respective witnesses. The judgment of the Court is in reality predicated wholly upon the undisputed fact that the church plaza has been used by the public and the residents of the town of Victoria for various celebrations.

We respectfully submit that the inference from this fact drawn by the Supreme Court is utterly unwarranted. The residents of the town of Victoria were all members of the parish. The use of this plaza for the purpose of their celebrations was natural and proper, and the fact that the priests sanctioned it, or even encouraged it, in no wise militates against the title of the Church, which has always held its property in trust for its members.

We respectfully ask this Honorable Court, therefore, not to approach this case with the very natural disinclination to deal with conflicting statements of fact, but rather to look at the whole record as presenting one of those problems necessarily arising upon the divorce of church and state in our Insular possessions, the essential elements of which are not in dispute.

If the principles heretofore applied as to admitting the ownership in the Church to all that property over which she exercised control in her own way, for her own purposes, through her own authorities, be adhered to, the judgment of the Supreme Court of the Philippine Islands must be reversed. The judgment of that Court is incompatible with the principles laid down in the case of Ponce *v.* The Roman Catholic Church (*supra*); it rests upon an illogical inference from an unwarranted assumption and evinces a misconception of the entire situation.

All of which is respectfully submitted this 5th day of February, 1912.

FREDERIC R. COUDERT,
HENRY W. VAN DYKE,
Of Counsel for Appellant.

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No. 18.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

MGR. JEREMIAH J. HARTY, APPELLANT AND PLAINTIFF IN ERROR,

v.

THE MUNICIPALITY OF VICTORIA.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR AND APPELLEE.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912

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In the Supreme Court of the United States.

OCTOBER TERM, 1912.

MGR. JEREMIAH J. HARTY, Appellant and Plaintiff in Error,
v.
THE MUNICIPALITY OF VICTORIA. } No. 13.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANT IN ERROR AND APPELLEE.

STATEMENT.

The plaintiff below, in his representative capacity as legal administrator of the property of the Roman Catholic Church, brought an action in the Court of First Instance of the Province of Tarlac, Philippine Islands, against the Municipality of Victoria, praying to have a parcel of land known as the Plaza of the Church of Victoria, and then in possession of said Municipality, declared the property of the church (R. 1–2). The Court of First Instance held that the plaintiff below had a superior right against the defendant to the possession of the land (R. 4). This

judgment was reversed by the Philippine Supreme Court, and to review this latter judgment, the case was brought here both on writ of error and by appeal (R. 55, 56).

FACTS.

The land here in controversy is the public square surrounding the church and parish-house (*convento*) of the town, and apart from the land on which the church and parish-house are situated (fols. 2, 3, 66–67).

Concededly, Victoria was established as a town in 1855 (R. 31, Exhibit "I"), and the plaza then laid out as an integral part of the town. It is also undisputed that the plaza was freely utilized for all public celebrations customary in a Spanish town, religious as well as social (fols. 44, 29, 35, 46, 41). The character of the property as *public* property, resulting from its dedication to public uses, was sought to be met by testimony that it was subsequently donated, *in pais*, to the parish by the principal men of the town (*principales*), without show or suggestion of their authority (fols. 18–19); that trees were planted partly by priests and partly by the municipal authorities, and that part of the land was cultivated, and crops gathered by the priests and acolytes (fols. 26, 43, 48, 29, 41, 45, 46). In other words, there was disputed testimony of fact and assertion of possession by the plaintiff (fols. 17, 38) met by counter testimony and assertion (fols. 41, 44, 47, 54, 51). The evidence in the case is much too disputed and indecisive even to help us in ascertaining the strong psychologic factor

of association in a community's mind as to the fact of possession. (*cf. Cariño* v. *Insular Government*, 212 U. S. 449, 459.)

The testimony was thus summarized by the Insular Supreme Court:

> From the evidence presented by both parties it appears that the town of Victoria, which was formerly only a barrio of the town of Tarlac and known as Canarum, was converted into a town in 1855, and named Victoria; to this end they must have laid out the streets and the plaza of the town, in the center of which was situated the church and parish house from the commencement, and at the expiration of about twelve years the parish of said town was constituted and the priest who was to perform the office of curate was appointed; that from the very begining the large tract of land that surrounds the church and the parish house was known as a public plaza, destined to the use of all the residents of the recently founded town; public performances and religious processions were held thereon without hindrance either on the part of the local authorities or of the curate of said town.
>
> It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future town which was subsequently called Victoria, should have streets and a public plaza with its church and parish house, and also a tribunal or building destined for the use of the municipality and the local official at that

> time called the governadorcillo and later on capitan municipal, as has occurred in the foundation of all the towns in these islands, under the old administrative laws. (R. 39.)

In the light of this evidence and the applicable principles of law, the court below reached this conclusion:

> Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, in as much as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria ever since its creation. For the above reasons it is our opinion that the judgment appealed from should be reversed, and that it should be held, as we do hereby hold, that the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of the said town of public use, . . . (R. 40.)

ARGUMENT.

We shall argue:

1. The value of the land involved in this action does not exceed twenty-five thousand dollars, and the case should, therefore, be dismissed.

2. In any event the appeal must be dismissed. The case is reviewable only by writ of error, and the disposition of questions of fact by the court below is not open to consideration here.

3. The plaza is an essential part of the organic scheme in the establishment of a pueblo. It forms an indispensable portion of the municipality's public property and, as such, is neither alienable nor prescriptible.

4. If reviewable under any circumstances, the finding of the lower court that the plaintiff had no established claim of ownership to the public plaza is amply supported by evidence and should not be disturbed.

I.

The value of the land involved in this action does not exceed twenty-five thousand dollars, and the case should, therefore, be dismissed.

The jurisdiction of this court to review judgments of the Supreme Court of the Philippine Islands is limited to cases,

> in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; . . . (Sec. 10, Act of July 1, 1902; c. 1369, 32 Stat. 695).

The judgment of the Insular Supreme Court here sought to be reversed, involves and concerns itself solely with the ownership of the land constituting the plaza, exclusive of the church and parish-house (*convento*) (fol. 71). No evidence bearing upon the value of this contested land appeared until the review of the judgment was sought. Affidavit was then

filed by the plaintiff deposing that the parcel of land described in the complaint is of the value of $25,000 (fol. 73), adding that the value of the church buildings is $25,000; that these buildings are rendered valueless by the decision of the Insular Supreme Court "because by said decision the said edifices are deprived of free egress and ingress, and are left without any adjacent land," and that, therefore, the value of the land in controversy exceeds the sum of $25,000 (R. 41). The attorneys for the plaintiff deposed that the land described in the complaint is of the value of $30,000; that the church and parish house are of the value of $25,000, and that the value of the property in controversy exceeded $25,000 (R. 42). No affidavits were filed on behalf of the Municipality. After a hearing, one of the Philippine Supreme Court justices concluded that the value in controversy in this case exceeded $25,000, and allowed the appeal. Judge Carson, however, who reached this general conclusion, made this specific finding:

> This holding is announced notwithstanding the *fact that by admission of counsel for plaintiff, it appears that the value of the parcel of land for which judgment was rendered in favor of the defendant municipality,* exclusive of the value of the adjoining parcel of land with the church and convent situated thereon, title to which is recognized to be in the plaintiff, and damages thereto resulting from the aforesaid judgment, does not exceed Twenty-five Thousand Dollars ($25,000.00) (R. 47, italics ours).

It is submitted that the court's finding of fact invalidated its conclusion that the jurisdictional amount, to allow of review here, is present. The real estate, which *alone is involved or brought into question here* by the issue of the case, the proof, and the judgment sought to be reviewed, is "the parcel of land described in the complaint," (affidavit of Archbishop Harty, R. 41), and for which the judgment was rendered in favor of the defendant Municipality (R. 47); and the value of that land, according to the finding of the judge granting the writ of error, does *not* exceed $25,000. Not the remotest possible claim of incidental damages was made in the pleadings, nor in the lower court, and none can possibly be urged here. For by the judgment of the Insular Supreme Court, which is sought to be reversed here, it is held that the land, which alone is in dispute, and which excludes the land occupied by the church and its parish-house, constitutes the public square or plaza of said town, devoted to public uses (fol. 71). Necessarily this carries with it the right of free ingress and egress to the church edifices. Therefore, their use and value are unaffected by the decision.

On this record, it would seem to be clear that the plaintiff has failed to establish that the requisite jurisdictional amount exists, and the case should be dismissed, (*Enriquez* v. *Enriquez*, 222 U. S. 123; Same v. Same, *ibid*, 127).

II.

In any event the appeal must be dismissed. The case is reviewable only by writ of error, and the disposition of questions of fact by the court below is not open to consideration here.

It is now settled that writ of error is the proper method of review in cases arising from the Philippines, except suits of an equitable nature. *Cariño* v. *Insular Government*, (212 U. S. 449); *Tiglao* v. *Insular Government* (215 U. S. 410, 414); *Jover* v. *Insular Government* (221 U. S. 623, 635). It was assumed, as of course, that writ of error is the appropriate method for reviewing an action like the present, for the recovery of land, in *Santos* v. *Roman Catholic Church*, (212 U. S. 463), and in *Ker* v. *Couden*, (223 U. S. 268). The appeal, therefore, must be dismissed.

It follows that questions of law only are here open. Concretely, the correctness of the decision of the Philippine Supreme Court, in reversing the conclusions of the Court of First Instance "by a preponderance of the evidence," according to section 497, Act 190 Philippine Commission, as amended (Compilation, Acts of the Philippine Commission, sec. 2929, p. 924), raises no question of law, and cannot be here considered. This was so ruled in *Behn* v. *Campbell* (205 U. S. 403, 408-409). In fact the whole theory of the plaintiff-in-error's case here rests upon a consideration of questions not open for review. His whole argument is a justification of the findings on the facts of the Court of First Instance. (Plaintiff

in Error's Brief, pp. 6 and 15.) The Insular Supreme Court, in the exercise of its appropriate jurisdiction, has set aside those findings. The plaintiff in error now asks this court to review those questions of the balancing of facts, the appropriateness and the extent of inference from facts, which are the province of triers of facts, but raise no issues of law, (*Behn* v. *Campbell*, *supra*.) On this ground the case should be dismissed for want of jurisdiction.

III.

The plaza is an essential part of the organic scheme in the establishment of a pueblo. It forms an indispensable portion of the municipality's public property and, as such, is neither alienable nor prescriptible.

Indisputably the Town of Victoria was founded in 1855. (R. 31.) It was established, therefore, under the Law of the Indies, and in conformity with the traditional customs of the people. The plaza was laid out when the town was founded; it was the heart of the town. It is common knowledge that the plaza or public square forms the center of the life of every Spanish or Spanish-American town. It is a part of the public asset, devoted to public functions, essential to the religious and social life of the town. As the court below said:

> It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future town which was subsequently called Victoria, should have streets and a public plaza

with its church and parish house, and also a tribunal or building destined for the use of the municipality and the local official at that time called the governadorcillo and later on capitan municipal, as has occurred in the foundation of all the towns in these islands, under the old administrative laws. . . . (R. 39)

Thus we find this provision in Law 9, Title 7, Book 4 of the Compilation of the Laws of the Indies:

The great square where the town is to be commenced, if on the seacoast, must be made at the landing-place in the port, and if an inland place in the middle of the town: its form of a parallelogram, which shall be at least one and one-half times as long as it is wide, in order to be more suitable for equestrian and other festivals: its size being proportionate to the number of inhabitants of the town, and consideration being had for future growth, let it not be less than two hundred feet wide and three hundred feet long, or more than eight hundred feet long and five hundred and thirty-two feet wide; it being of fairly good proportion if six hundred feet long and four hundred feet wide: From the great square let there be four principal streets, each to start from the middle of each side; and in addition thereto, two to start from each corner: the four corners to look toward the four principal winds, for if the streets leave the great square in this wise they will not be exposed to the four winds, which would be highly incommodious: All houses surrounding the great square, and on the four principal streets that are to start from it, to have arcades for the convenience of traf-

> fickers wont to gather there: the eight streets departing from the four corners to run free, without running into the arcades,[1] . . .

Similar provisions of the Law of the Indies are set forth in detail in *Municipality of Catbalogan* v. *Director of Lands*, (17 Philippine, 216), from which the court reaches the following conclusions as to the essential conditions affecting the establishment of a *pueblo:*

> It may be affirmed that years afterwards all the modern pueblos of the Archipelago were formed by taking as a basis for their establishment the barrios already populated by a large number of residents who, under the agreement to build the church of the new pueblo, the courthouse, and afterwards the schoolhouse, obtained from the General Government the administrative separation of their barrio from the pueblo on which it depended and in whose territory it was previously comprised. In such cases procedure analogous to that prescribed by the Laws of the Indies was observed.
>
> For the establishment, then, of new pueblos, the administrative authority of the province, in representation of the Governor General, designated the territory for their location and extension and the metes and bounds of the same; and before allotting the lands among the new settlers, a special demarcation was made of the places which were to serve as the public square of the pueblo, for the erection of the

[1] All the renderings into English from Spanish or French texts have been made by Mr. Frank L. Joannini, translator of the Bureau of Insular Affairs.

> church, and as sites for the public buildings, among others, the municipal building or the *casa real*, as well as of the lands which were to constitute the commons, pastures, and *propios* of the municipality and the streets and roads which were to intersect the new town were laid out, as may be seen by the following laws: (17 Philippine 220).

In other words, the plaza, just as the court house and the land on which it is situated involved in the *Catbalogan* case, was necessary and indispensable for the existence of the *pueblo* (17 Philippine 216, 227).

It is idle to suggest that there was no evidence as to the custom attending the laying out of the plaza. The custom is of the essence of community life in the Philippines, imbedded in the law, and even more ingrained in the social demands and habits of the people. Of course, this Court will take judicial notice of this custom, as above set forth, by the Philippine Supreme Court.

The plaza then is communal municipal property. The function it fulfills makes it inevitable that the law should fix upon it the character of public property. Thus law 9, title 28, partida 3, provides:

> Separately, all water sources, squares where fairs and markets are held, places where meetings of councils are held, and sandy places on the banks of streams, and other *éxidos* [uncultivated lands belonging to the town] and horse race courses, and forests, and grazing lands, and all other such places, that are established and

granted for the commonweal of each City, or *Villa*, or Castle, or any other place are the *common property* of each such City or *Villa*. So that every man there dwelling may have the use of all these things aforesaid: and they are common to all, as much to the poor as to the rich. Moreover those who dwell in another place can not make use thereof against the will and prohibition of those who dwell therein.

The Civil Code lays down the same rule:

> The property of provinces and of towns is divided into property for public use and patrimonial property. (Article 343.)
>
> Provincial and local roads, *squares*, streets, public fountains and waters, walks, and public works of general service, paid for by the towns and provinces are property for public use.
>
> All other property possessed by either is patrimonial property, and shall be governed by the provisions of this Code, unless otherwise provided in special laws. (Article 344, *ibid.*)

To the same effect, see 2 Sanchez Roman, Estudios del Derecho Civil español 486.

Being devoted to the public use, and fulfilling a public necessity, it is to be expected that the property is neither alienable nor prescriptible, and such is the law.

Law 7, title 29, partida 3, provides:

> No man can acquire by time any plaza, nor street, nor road, nor *érido* [uncultivated land belonging to the town], nor anything else of a similar character which is of common use by the people of a place, city, etc. . . . (3 Gutierrez Fernandez, 59).

To the same effect is law 15, title 5, partida 5:

> A freeman, and a thing which is sacred, or religious, or holy, or a public place, as well as *plazas*, and roads, and éxidos [uncultivated lands belonging to the town], and rivers, and the springs which belong to the King, or to the common property of a council, cannot be sold nor alienated. . . .

And so the court below ruled that plazas destined to the public use are not subject to prescription, under authority of article 1936 of the Civil Code, providing that only objects of commerce are capable of prescription. From the above, it is clear that the plaza is *not* an object of commerce. And so Laurent, quoted in Manresa, holds:

> The public domain is governed by the same principles, whether it be of the State, the province or the municipality. It is always out of commerce, and therefore is inalienable and not prescriptible. . . . (Manresa, vol. 3, p. 100.)

IV.

If reviewable under any circumstances, the finding of the lower court that the plaintiff had no established claim of ownership to the public plaza is amply supported by evidence and should not be disturbed.

1. Indisputably the plaza was originally public property owned by the municipality (fols. 17, 35). Since the property was a public square, the burden is on the plaintiff to prove that it had ceased to be such by reason of some action taken by competent authorities to that end, or by prescriptive user, if

under any theory such public property is prescriptible. (*Nicolas* v. *José*, 6 Philippine, 589, 591; *Whitney* v. *United States*, 181, U. S., 104, 117.)

2. The plaintiff's claim of ownership rested (a) on an alleged transfer to the local priest by the *principales* of the *pueblo* and (b) on certain acts of user on behalf of the church.

(a) When the town was founded, the necessary property for communal purposes was donated by some of the citizens. Later, when the parish was established, property was donated to the church for church purposes (folios 16, 17, 18, 28, 31, 35, 37). The plaintiff's case rests upon the claim that the properties so donated to the church included the plaza in controversy which at all times was uninterruptedly used for the various municipal functions which the Spanish plaza serve. The record shows no instrument of title to support the claim, but very tenuous evidence of a transfer *in pais*, wholly lacking in convincing definiteness as to the extent and circumstances of the grant.

> A. When the town was founded my father ceded the land to the town, and the principal citizens of the town donated the land to the priest.
>
> Q. According to your statement, then, your father donated the land to the town, and the principal citizens of the town in turn gave it to the priest?
>
> A. Yes, sir.
>
> Q. How do you know that the principal citizens of the town gave that land to the priest?

A. Because I saw it myself.

Q. Were you one of the principal citizens of that town?

A. Here in Tarlac, yes.

Q. Do you know whether the Gobernadorcillo of the town had any authority to donate public property, for instance the city hall, to the priest of the town, to the Pope or to anybody else?

A. Yes, sir.

Q. You mean as such Gobernadorcillo?

A. Not as Gobernadorcillo, but with the consent of the principal citizens of the town he could.

Q. Without even consulting His Majesty's Government?

A. I have always noticed that the principal citizens of the town, before making a requisition for a priest, would build the church and convent, and then the church authorities, if they deemed it convenient, would send a priest; and as the Commissioners of Victoria said that the people could support one they sent a priest and the principal citizens of the town turned everything over to him.

Q. Did you see that deed of transfer?

A. No, sir.

Q. Then, whence did you get that idea?

A. I was present when the principal citizens of Victoria turned the property over to him.

Q. When was that? Please state the date?

A. I don't remember, now (fols. 17–18).

And again—

Q. Was the delivery to the priest made only to give him control of the plaza or to transfer the ownership thereof to him?

A. I don't know anything about ownership; all that I know is that the prominent citizens said that they had delivered to the priest both the plaza and the church.

Q. Then you are unable to state to the court whether they actually transferred the ownership of the property or not?

A. I don't know, because I haven't seen any paper to that effect (fols. 37–38).

In the light of this and like evidence, the court below held:

> Even though all the remaining space of land which now forms the great plaza of the town of Victoria had been owned by the said Tañedo, it must be presumed that he waived his rights thereto for the benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said plaza; it has not been satisfactorily shown that the municipality or the principales of the town of Victoria had donated the whole of said land to the curate of Victoria or to the Catholic Church as alleged; * * * (fol. 69.)

There is, further, a complete failure to show that the *principales* had any power to surrender the public's ownership of this public plaza. The Philippine Supreme Court has ruled that the *principales* of a town had no power to convey title to public lands, (*Evangelista* v. *Bascos*, 5 Philippine, 255), and their political function was such as to preclude the as-

sumption that they possessed power to alienate municipal property vital to the municipal life.

> Under the Spaniards the *principalía* (principal persons) were understood to be the aggregate in each pueblo of all those individuals who had held office or were holding office or who paid a land tax of fifty dollars. The principalía constituted the voting class—no one could vote who was not a member of the principalía. (1 Census of the Philippine Islands, 365, note.)

It has been pointed out[1] that the *principalía*, therefore, seems to have constituted a class rather than an organized body, which view is corroborated by the fact that after a certain number of years of service, teachers and their assistants become entitled to be called principales. (46 Blair & Robinson's History of the Philippine Islands, 83.) The Philippine Supreme Court has found no power on the part of the *principales* to alienate this public plaza, and no such authority can be presumed from its alleged exercise. (See *Chavez* v. *United States*, 175 U. S., 552, 558.)

(b) We have shown that a public plaza is a species of property against which no prescriptive rights can be acquired, and the court below has so found. (fol. 69.) Assuming, however, the contrary, the evidence clearly justifies the finding of the court below against the plaintiff's claim. The record is lacking in clear evidence of a possession by the

[1] By the late Mr. Bowers in his brief (p. 33) in *Tiglao* v. *United States*, 215 U. S. 410.

plaintiff inconsistent with and exclusive of its public use. (Compare fols. 23, 27, 29, 30, with fols. 33, 38, 41, 44–45, 46, 51.) On the contrary, the evidence shows that the plaza was never divested of its public character and its unvarying use for public civic purposes. There is, therefore, lacking the evidence necessary to establish a title by adverse possession. (*Whitney* v. *United States*, 167 U. S., 529, 547; *Bergere* v. *United States*, 168 U. S., 66, 80; and *Hays* v. *United States*, 175 U. S., 248, 259.)

It is true that trees were planted partly by the curates and partly by the municipal authorities (fols. 23, 29, 32, 45, and 46). This, as the court below pointed out, does not evidence acts of private ownership, but rather a public use in an intent to embellish the plaza in the interest of the townspeople. (fol. 69.) And that some of the land was cultivated and the crops were gathered by priests and acolytes (fols. 26, 43) are at best acts of slight occupancy which this Court, under circumstances more favorable to public dispossession than is involved in the case of a public plaza, deemed too indecisive to establish a prescriptive right. (See *Bergere* v. *United States*, 168, U. S., 66, 80; and *Hays* v. *United States*, 175 U. S., 248, 259.)

In truth, all the various acts of dominion over the plaza exercised by the parish priests, without in any wise impairing the municipal ownership over the plaza, are referable to the close intimacy between government and church in the Philippines prior to the cession of the islands to the United States.

Therefore, we find this apparent mingling of authority, this joint exercise of official and unofficial influence on the part of the parish priests and the municipal authorities of the *pueblo*. Thus it is that the plaza was indiscriminately used for church and secular purposes. When it was needed for a religious procession or festival, the necessary administrative control over the plaza was doubtless exercised by the priest. On the other hand, in the case of a fair or a secular feast, the administrative direction was in the hands of the *gobernadorcillo*. This reconciles the apparently conflicting evidence as to the authority by whom control was exercised over the plaza, with just regard to the social and political conditions then prevailing in the islands. The controlling fact is that the undisputed evidence shows the plaza to have been utilized for all the public purposes, on all public occasions—religious or secular—and this use inevitably stamps the plaza as public property devoted to the public use.

(c) At all events, the plaintiff's claim rests on disputed acts of possession and the court below has found against it. Such a finding is a finding of ultimate fact, "and has the same legal effect as the finding of a jury in a special verdict, and the sufficiency of the evidence to support the finding cannot be considered upon this appeal." (*Smith* v. *Gale*, 144 U. S., 509, 525.)

3. We are unable to see that *Ponce* v. *Roman Catholic Church*, 210 U. S., 296, relied upon by the plaintiff, has any bearing upon the present case.

The Ponce case simply decided (a) the legal personality of the Roman church and its capacity to hold property in our Insular possessions; and (b) that the right of ownership of church property is unaffected by the fact that such property was acquired from gifts even of public funds. (See *Santos* v. *Roman Catholic Church*, 212 U. S., 463, 465.) In the *Ponce* case this Court dealt with the ownership of church edifices at all times exclusively devoted by the Church for worship. In this case we are dealing with a claim to a public plaza at all times devoted to *all* public purposes, civic and religious.

CONCLUSION.

The appeal and writ of error should be dismissed, or the judgment of the Supreme Court of the Philippines should be affirmed,

Respectfully submitted.

Felix Frankfurter,

Law Officer,
Bureau of Insular Affairs.

OCTOBER, 1912.

○

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No. 13.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, APPELLANT AND PLAINTIFF IN ERROR,

v.

THE MUNICIPALITY OF VICTORIA.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

NOTICE OF MOTION TO DISMISS UPON HEARING OF CASE.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1912

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, APPELLANT and plaintiff in error, *v.* THE MUNICIPALITY OF VICTORIA. } No. 149.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

NOTICE OF MOTION TO DISMISS UPON HEARING OF CASE.

Please take notice that upon the hearing of this cause a motion to dismiss for want of jurisdiction will be made on the ground that the value of the real estate in controversy by the issues of the case does not exceed the sum of $25,000 (act of July 1, 1902, 32 Stat., 695), as appears from the record in the case and from the affidavits of Ambrosio Rigor, Ignacio Villarta, and José Topacio, copies of which have been heretofore furnished you, and for the consideration of which leave of the honorable court will be asked.

FELIX FRANKFURTER,
Law Officer, Bureau of Insular Affairs.

To HENRY W. VAN DYKE,
Counsel for Appellant and Plaintiff in Error.

MARCH, 1911.

36311—12

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

MGR. JEREMIAH J. HARTY, APPELLANT AND Plaintiff in Error, *v.* THE MUNICIPALITY OF VICTORIA. } No. 149.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

ADDITIONAL AFFIDAVITS ON BEHALF OF APPELLEE AND DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS FOR WANT OF JURISDICTION.

LOS ESTADOS UNIDOS DE AMERICA

ISLAS FILIPINAS.

DECLARACION JURADA.

Yo, José Topacio, Tesorero Interino de la Provincia de Tarlac, I. F., bajo juramento y en forma legal, por el presente hago constar líbre y espontáneamente lo siguiente:

Que la plaza pública del municipio de Victoria, Tarlac, cuyos linderos son como siguen: Al Norte,

Calle San Mariano; al Sur, calle Rizal; al Este, calle San Ambrosio y al Oeste, calle San Andrés, tiene una superficie de 84,548 metros cuadrados.

Que, ateniendome al precio á que actualmente se cotizan los solares dentro del casco de la poblacion de Victoria, Tarlac, declaro solemnemente que el valor de la mencionada plaza es ₱6,763.84. (₱800.00 por hectárea.)

Y para que asi conste firmo el presente affidavit en Victoria, Tarlac, hoy, 22 de Noviembre de 1911.

JOSÉ TOPACIO
Tesorero Interino, Provincia de Tarlac.

Firmado en presencia de
RAYMUNDO PEDRO
CIRILO EDRALÍN

Suscrito y jurado ante mi hoy 22 Nov. 1911, Victoria Tarlac, I. F. despues de exhibido su ced[a] No. 986831, En. 10, 1911

R/. No. 349 página 46, Libro 1[ro]

(Ante mi), VALENTIN GAMALINDA
Notario Público hasta
31 de Diciembre de 1912.

(Seal and int. rev. stamp.)

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
City of Manila.

I, Ignacio Villamor, Attorney-General for the Philippine Islands, do hereby certify that Valentin Gamalinda, a notary public in and for the Province of Tarlac, Philippine Islands, taking the ac-

knowledgment of the foregoing instrument bearing date of the 22nd day of November, 1911, is in fact the official he purports to be; that is to say, a notary public in and for the Province of Tarlac, Philippine Islands, and as such authorized by the laws of the Philippine Islands to take acknowledgments and administer oaths; and I further certify that the signature and notarial seal of the said Valentin Gamalinda attached to the foregoing instrument are genuine.

Given under my hand and official seal this 25th day of November, 1911.

[SEAL.] IGNACIO VILLAMOR,
Attorney-General.

[Translation.]

THE UNITED STATES OF AMERICA
PHILIPPINE ISLANDS.

SWORN STATEMENT.

I, José Topacio, Acting Treasurer of the Province of Tarlac, P. I., having been duly sworn, do hereby freely and spontaneously depose:

That the public square of the municipality of Victoria, Tarlac, the boundaries whereof are as follows: To the north, Calle San Mariano; to the south, Calle Rizal; to the east, Calle San Ambrosio, and to the west, Calle San Andrés, has an area of 84,548 square meters.

That, basing my valuation on the current price of lots within the *población* of Victoria, Tarlac, I

solemnly declare that the value of said square is ₱6,763.84. (₱800.00 per hectare).

In witness whereof I set my hand to the present affidavit at Victoria, Tarlac, this 22nd day of November, 1911.

(Sgd.) José Topacio,
Acting Treasurer, Province of Tarlac.

Signed in the presence of

(Sgd.) Raymundo Pedro.
(Sgd.) Cirilo Edralin.

Subscribed and sworn to before me, this 22nd day of November, 1911, at Victoria, Tarlac, P. I., affiant having exhibited his cédula No. 986831, of January 10, 1911.

R. No. 349, page 46, 1st Book.
(Seal and int. rev. stamp).

(Sgd.) Valentin Gamalinda,
Notary Public until December 31, 1912.

Los Estados Unidos de America

ISLAS FILIPINAS

DECLARACION JURADA.

Yo, Ignacio Villarta, casado, mayor de edad y vecino de este municipio de Victoria, provincia de Tarlac, I. F., propietario y Ex-Presidente del citado municipio, bajo juramento y en forma legal, por el presente hago constar líbre y espontáneamente lo siguiente:—

Que la plaza publica del municipio de Victoria, Tarlac, cuyos linderos son como siguen: Al Norte, Calle San Mariano; al Sur, calle Rizal; al Este, calle San Ambrosio y al Oeste, calle San Andres, tien una superficie de 84,548 metros cuadrados.

Que, ateniendome al precio a que actualmente se cotizan los solares dentro del casco de la poblacion de Victoria, Tarlac, declaro solemnemente que el valor de la mencionada plaza es ₱6,763.84 (₱800.00 por hectarea)

Y para que asi conste firmo el presente affidavit en Victoria, Tarlac, hoy, 22 de Noviembre de 1911.

IGNACIO VILLARTA

Firmado en presencia de
HILARIO VILLA
CIRILO EDRALÍN

Suscrito y jurado ante mi hoy en Victoria, Tarlac, 22 de Nov. 1911, despues de haberme exhibido su cedula personal No. F 993108, Apr. 29, 1911, Victa.

R/. No. 351, pagina 46, Libro 1°

(Ante mi,) VALENTIN GAMALINDA
Notario Público hasta 31 de Diciembre de 1912.

(Seal and int. rev. stamp.)

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
City of Manila.

I, Ignacio Villamor, Attorney-General for the Philippine Islands, do hereby certify that Valentin

Gamalinda, a notary public in and for the Province of Tarlac, Philippine Islands, taking the acknowledgment of the foregoing instrument bearing date of the 22nd day of November, 1911, is in fact the official he purports to be; that is to say, a notary public in and for the Province of Tarlac, Philippine Islands, and as such authorized by the laws of the Philippine Islands to take acknowledgments and administer oaths; and I further certify that the signature and notarial seal of the said Valentin Gamalinda attached to the foregoing instrument are genuine.

Given under my hand and official seal this 25th day of November, 1911.

[SEAL.] IGNACIO VILLAMOR
Attorney-General.

[Translation.]

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS

SWORN STATEMENT.

I, Ignacio Villarta, married, of age, a resident of this municipality of Victoria, Province of Tarlac, P. I., property-owner and late municipal president of said municipality, having been duly sworn, depose freely and spontaneously:

That the public square of the municipality of Victoria, Tarlac, the boundaries whereof are as follows: To the north, Calle San Mariano; to the south, Calle Rizal; to the East, Calle San Ambrosio, and to the west, Calle San Andrés, has an area of 84,548 square meters.

That, basing my valuation on the current price of lots within the población of Victoria, Tarlac, I solemnly declare that the value of said square if ₱6,763.84 (₱800.00 per hectare).

In witness whereof I set my hand to the present affidavit at Victoria, Tarlac, this 22nd day of November, 1911.

(Sgd.) IGNACIO VILLARTA.

Signed in the presence of

(Sgd.) HILARIO VILLA.

(Sgd.) CIRILO EDRALIN.

Subscribed and sworn to before me at Victoria, Tarlac, this 22nd day of November, 1911, affiant having exhibited to me his cédula personal No. F. 993108, April 29, 1911, Victoria.

R. No. 351, page 46, 1st Book.

(Seal and int. rev. stamp.)

(Sgd.) VALENTIN GAMALINDA.

Notary Public until December 31, 1912.

LOS ESTADOS UNIDOS DE AMERICA

ISLAS FILIPINAS.

DECLARACION JURADA.

Yo, Ambrosio Rigor, mayor de edad, casado y vecino del municipio de Victoria, provincia de Tarlac, I. F., propietario y Ex-Vice Presidente del citado municipio, bajo juramento y en forma legal, por el presente hago constar líbre y espontáneamente lo siguiente:

Que la plaza pública del municipio de Victoria, Tarlac, cuyos linderos son como siguen: Al Norte, calle San Mariano; al Sur, calle Rizal; al Este, calle San Ambrosio y al Oeste, calle San Andres, tiene una superficie de 84,548 metros cuadrados.

Que, ateniendome al precio á que actualmente se cotizan los solares dentro del casco de la poblacion de Victoria, Tarlac, declaro solemnemente que el valor de la mencionada plaza es ₱6,763.84 (₱800.00) por hectárea.

Y para que asi conste firmo el presente affidavit en Victoria, Tarlac, hoy, 22 de Noviembre de 1911.

AMBROSIO RIGOR

Firmado en presencia de

HILARIO VILLA

CIRILO EDRALÍN

Suscrito y jurado ante mi hoy en Victoria, Tarlac, á 22 de Noviembre de 1911 despues de haberme exhibido su cedula personal No. F 991390, Feb. 20, 1911, Victoria Tarlac, I. F.

R/. No. 350, pagina 46, Libro 1ro

(Ante mi,) VALENTIN GAMALINDA

Notario Público hasta 31 de Diciembre de 1912.

(Seal and int. rev. stamp.)

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
City of Manila.

I, Ignacio Villamor, Attorney-General for the Philippine Islands, do hereby certify that Valentin

Gamalinda, a notary public in and for the Province of Tarlac, Philippine Islands, taking the acknowledgment of the foregoing instrument bearing date of the 22nd day of November, 1911, is in fact the official he purports to be; that is to say, a notary public in and for the Province of Tarlac, Philippine Islands, and as such authorized by the laws of the Philippine Islands to take acknowledgments and administer oaths; and I further certify that the signature and notarial seal of the said Valentin Gamalinda attached to the foregoing instrument are genuine.

Given under my hand and official seal this 25th day of November, 1911.

[SEAL.] IGNACIO VILLAMOR
Attorney-General.

[Translation.]

UNITED STATES OF AMERICA
PHILIPPINE ISLANDS.

SWORN STATEMENT.

I, Ambrosio Rigor, of age, married, and a resident of the municipality of Victoria, Province of Tarlac, P. I., property-owner and late vice-president of said municipality, having been duly sworn, freely and spontaneously depose:

That the public square of the municipality of Victoria, Tarlac, the boundaries whereof are as follows: To the north, Calle San Mariano; to the south, Calle Rizal; to the east, Calle San Ambrosio,

and to the west, Calle San Andrés, has an area of 84,548 square meters.

That, basing my valuation on the current price of lots within the *población* of Victoria, Tarlac, I solemnly declare that the value of the said plaza is ₱6,763.84 (₱800.00) per hectare.

In witness whereof I set my hand to the present affidavit at Victoria, Tarlac, this 22nd day of November, 1911.

(Sgd.) AMBROSIO RIGOR.

Signed in the presence of

(Sgd.) HILARIO VILLA

(Sgd.) CIRILO EDRALIN.

Subscribed and sworn to before me this 22nd day of November, 1911, at Victoria, Tarlac, affiant having exhibited to me his cédula personal No. F. 991390, Febr. 20, 1911, Victoria, Tarlac, P. I.

R. No. 350, page 46, 1st Book.

(Seal and int. rev. stamp.)

(Sgd.) VALENTIN GAMALINDA,

Notary Public until December 31, 1912.

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MONSIGNOR HARTY *v.* MUNICIPALITY OF VICTORIA.

APPEAL FROM AND ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 13. Argued October 30, 1912.—Decided November 11, 1912.

A suit to recover real estate, like an ordinary action at law, can only be brought to this court from the Supreme Court of the Philippine Islands by writ of error; it cannot be brought by appeal.

Where, as in this case, there is no question of law, this court cannot, on writ of error, review the finding of the Supreme Court of the Philippine Islands that the preponderance of contradictory evidence was on the defendant's side.

Quære whether in this case the jurisdictional amount of $25,000 was involved.

Appeal from and writ of error to review 18 Phil. Rep. 600, dismissed.

THE facts, which involve the jurisdiction of this court of appeals from, and error to, the Supreme Court of the Philippine Islands, are stated in the opinion.

Mr. Frederic R. Coudert, with whom *Mr. Henry W. Van Dyke* was on the brief, for appellant and plaintiff in error.

Mr. Felix Frankfurter for appellee and defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This suit was brought by the Archbishop of Manila to recover a square in the Municipality of Victoria. The church of the town and its parish house stand in this square and they are admitted to be church property, but the land not occupied by them was declared by the Supreme Court to constitute the public square or plaza

of the town, devoted to public uses. The plaintiff brought a writ of error and appealed. The appeal must be dismissed. *Jover* v. *Insular Government*, 221 U. S. 623, 635. *Cariño* v. *Insular Government*, 212 U. S. 449, 456. The suit is like an ordinary action at law, and can be brought to this court only by writ of error, as was done in *Santos* v. *Roman Catholic Church*, 212 U. S. 463, and *Ker* v. *Couden*, 223 U. S. 268.

There is a motion to dismiss the writ of error also, on the ground that the value of the real estate in controversy does not exceed $25,000. Affidavits to that effect are offered, and the order allowing the writ purports to do so on affidavits of the plaintiff and two others, "notwithstanding the fact that by admission of counsel for plaintiff, it appears that the value of the parcel of land for which judgment was rendered in favor of the defendant municipality, exclusive of the value of the adjoining parcel of land with the church and convent situated thereon, title to which is recognized to be in the plaintiff, and damages thereto resulting from the aforesaid judgment, does not exceed twenty-five thousand dollars." We doubt whether the affidavits do not imply the same admission, and whether the action should not be dismissed on that ground. The affidavit of the plaintiff puts the value of the land in controversy at over $25,000 on the manifestly untenable ground that the church edifices are deprived of free egress and ingress by the decision, and the others seemingly mean that the parcel of land with the church buildings included is worth thirty thousand dollars, the buildings being valued at twenty-five thousand dollars—leaving five thousand dollars for the land in dispute.

But the result is the same if we go further. The evidence was contradictory, and although we were invited to consider it on the one side in the light of the relation of the church to the community and on the other in that of the custom by which the plaza is of the essence of a

town, we can do neither. There is no question of law before us—for it hardly was argued, and could not be with any seriousness, that the Supreme Court was not authorized to review the evidence under § 497 of the Philippine Code, or that this court can consider whether it was right in finding the preponderance of evidence to be on the defendant's side.

Appeal and writ of error dismissed.